

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

56

O.A. No./T.A. No. 1305 of 1991 Decided on: 12-9-97
and other connected OAs

Shri M.K.Sarkar
& Other connected OAs

(By Advocate: Shri P.P. Khurana,
Shri Ashok Aggarwal for applicants

VERSUS

U.O.I. & Anr.

Respondents

(By Shri V.P.Uppal)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

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

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

(SK)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
New Delhi.

Dated: this the 12th September, 1997.

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1) OA - 1305/91

Shri M.K. Sarker,
S/o Late Shri R. D. Sarker,
R/o 164 A/4/2, Lake Gardens,
Calcutta - 700 045

.....Applicant

2) OA - 482/92

Shri A.K. Malik,
Deputy Commissioner of Income Tax,
Range III,
3, Govt. Place West,
Calcutta - 1

.....Applicant

3) OA - 4/92

Shri Sukhdev Chand,
Deputy Commissioner of Income Tax
(Appeals), Central Range - I,
Calcutta

.....Applicant

4) OA-2969/92

Shri J. R. Tanta,
S/o Late Sh. Tula Ram,
Commissioner of Income Tax,
Ayakar Bhavan,
Ahmedabad

.....Applicant

5) O.A.No.3162/92

Shri Shivanandan Prasad,
S/o Sh. Shankar Sah,
Deputy Director,
Directorate of Management Services (IT Deptt),
Aiwni Ghalib,
Mata Sundari Lane,
New Delhi - 110 002

.....Applicant

6) O.A.454/94(PB) (OA -226/89 Ahmeda. Bench

Shri G. S. Gopala ,
HLL-16, Anand Vihar,
Near Haringar Depot.,
Jail Road,
New Delhi- 64

.....Applicant

versus

(A)

1. Union of India
through

The Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

2. Central Board of Direct Taxes,
through its Chairman,
North Block,
New Delhi

..... Respondents.

Shri P.P. Khurana for the applicants.
Shri Ashok Agarwal for Applicant in OA-482/92
Shri V.P. Uppal for the respondents

JUDGMENT

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

As all these OAs involve common questions of law and fact, they are being disposed of by this common order.

2. Applicant in OA No.4/92 Shri Sukhdev Chand and applicant in OA No.2869/92 Shri Tamta along with applicants in two other OAs (No.2751/92 and No.825/93) had sought a direction to Respondents to promote them as Commissioners of Income Tax in pursuance of the DPC's recommendations held in October, 1986, September, 1987 and April, 1988 on the basis of seniority cum merit. All the applicants were in the feeder category of Dy. Commissioners and they alleged that several juniors had been promoted although applicants had been found fit and suitable by the DPC.

3. Those 4 OAs were heard and disposed of by another Bench of this Tribunal by judgment dated 20.1.94. The Tribunal noted that the only question which fell for consideration in the 4 OAs was whether promotion to the cadre of Commissioners of Income Tax was governed by

the principle of selection on merit or on the basis of seniority subject to rejection of the unfit and unsuitable. The Tribunal in its aforesaid judgment held that promotion to the cadre of Commissioners of Income Tax had to be made on the basis of selection on merit and not on the basis of seniority alone and dismissed the 4 OA's.

4. Against that judgment Shri Sukhdew chand filed Civil Appeal No.4172/96 and Shri Tamta filed Civil Appeal No.4173/96 in the Hon'ble Supreme Court which was disposed of by order dated 12.2.96 which is quoted below in full:

"Leave granted.

Heard learned counsel for the parties.

This appeal is directed against the order dated January 20, 1994 passed in OA No.4 of 1992 of the Central Administrative Tribunal, Principal Bench, New Delhi. We have considered the principle to be followed for promotion to the post of Commissioner of Income Tax. It appears to us that such post of Commissioner is to be filled up only on the basis of selection on merit. Seniority-Qum-merit is not the criterion for such promotion.

It has, however, been contended by the learned counsel for the appellant that the appellant has earned remarks 'good' in his confidential character rolls and such remark had been accepted by the Departmental promotion committees as sufficient to give promotion on selection by merit and posts of Commissioner, Income Tax have been filled up in a large number of cases by accepting such gradation as sufficient. Unfortunately in the case of the appellant a different standard had been applied. The learned counsel has also submitted before us that before the Central Administrative Tribunal, Principal Bench, Delhi four other matters are pending where similar questions namely grading as 'good' whether entitles an incumbent for the promotion to the post Commissioner of Income Tax on selection on merit are to be considered.

The learned counsel for the

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appellant has submitted that in all such cases, a uniform policy should be followed in the matter of promotion by way of selection on merit. Accordingly, the case of the appellant should also be considered along with such pending matters so that different standards are not applied thereby doing injustice in some cases.

Mr. Gauri Shankar, learned senior counsel appearing for the respondents has very fairly submitted that the principle of selection on merit is to be strictly followed and the departmental promotion committee should also follow a uniform policy in all cases of promotion to the post of Commissioner on merit assessment by applying uniform gradation. He has also submitted that if the case of the appellant is considered along with other pending matters before the Central Administrative Tribunal, by applying uniform gradation of the incumbents, he cannot possibly raise any objection.

Considering the facts of the case and the submissions made by the learned counsel for the parties, we dispose of this appeal by setting aside the impugned judgment and sending the matter back before the Principal Bench of the Central Administrative Tribunal, New Delhi, so that the case of the appellant is considered by it along with other pending matters. We make it clear that the promotion to the post of Commissioner of Income Tax is to be given only on the basis of merit assessment and not on other consideration, even if a different criterion had been followed in past. The Central Administrative Tribunal in considering OA -4/92 since remitted back to the Tribunal and other pending matters, should ensure that in all cases of promotion to the post of Commissioner of Income Tax, a similar standard is made applicable.

The appeal is disposed of accordingly.

The Civil Appeal No.4173 of 1996 (arising out of SLP (C) No.7706/95) where similar question is involved, is also disposed of in similar terms.

5. As per the aforesaid order, the specific direction to the Tribunal is to ensure that in all cases of promotion to the post of Commissioner Income Tax a similar standard is made applicable.

6. In this connection, we have heard the learned counsel for applicant s/ Shri P.P. Khurana and Ashok Agarwal, as well as learned counsel for Respondents Shri V.P. Uppal.

7. The records containing the OPC proceedings and the notings of the ACC contained in Files No.18(11) ED/88(SMI) and 18(58) ED/87 (ACC), which were called for were also seen by us.

8. A perusal of File No.18(58) ED/87(ACC) discloses that a OPC consisting of Chairman, UPSC; Secretary (Revenue); Chairman CBOT and Member, CBOT met from 8th to 10th September, 1987 for recommending a panel of 64 Asst. Commissioners of Income Tax for promotion as Commissioners of Income Tax. The OPC considered 174 officers for the purpose against 58 vacancies. It however recommended an extended panel of 64 officers. The last 6 officers were to be promoted in the event of six officers proceeding on training abroad not being available for posting. These vacancies of 64 officers were worked out for the period up to 31.3.88. These OPC minutes disclose that s/ Shri A.K. Malik (SC) (S.No.140); Sukhdev Chand (SC) (S.No.6) and J.R. Tanta (SC) (S.No.9) who are 3 out of six applicants before us, were assessed by the OPC as 'Good'. Shri G.S. Gopala (SC) (S.No.136) was assessed as "not yet fit" while in respect of the remaining 2 applicants viz. s/ Shri M.K. Sarker and Shiv Nandan Prasad it appears that their names were not placed before that OPC. At that point of time, Shri M.K. Sarker stood dismissed from service.

(b)

9. Similarly a perusal of File No. 18(11) EP/ 88(SM II) discloses that ^{the DPC} again met from 5th to 7th April, 1988 for preparation of a panel for making officiating promotion against 66 vacancies of Commissioner Income Tax pertaining to the period 1987-88. Those DPC minutes disclose that S/ Shri Sukhdev Chand (SC) (S.No.4); J. R. Tamta (SC) (S.No.11); G. S. Gopala (SC) (S.No.71) and A. K. Malik (SC) (S.No.75) and S.N. Prasad (S.No.110) were assessed by the DPC as 'Good' while in respect of remaining applicant Shri M.K. Sarkar, his case was not placed before the DPC, as he still stood dismissed from service.

10. The main line of attack by applicant's counsel is that while the aforementioned officers were rated as 'Good' by the two DPCs but were not recommended for inclusion in the panel, the minimum bench-mark for inclusion being 'very good'. Shri Panna Lal (SC), Smt. Baljit Mathiyani and Smt. Rama Rani Hota who had also been assessed only as 'Good' by the DPC and had not been recommended for inclusion in the panel, were subsequently included in the panel and promoted.

11. On perusing the relevant ACC minutes contained in the files referred to in paragraph 7 above, we notice that the following was recorded in respect of aforesaid three officers whose inclusion in the panel has been specifically challenged;

(1) SHRI PANNA LAL (SC):

It was minuted that he has been graded as

'good' and had been superseded but he deserved a better overall grading because in his CR dossier in 1980-81 he has been graded 'very good'; in 1981-82 he has been graded 'very good'; and in general observations it was noted 'quite good'; in 1982-83 he had been graded 'very good'; in 1983-84 he had been graded 'very good' under most parameters but no overall grading had been given. In 1984-85 he had been graded 'good'; in 1985-86 he had been graded 'very good' and in 1986-87 he had been graded 'very good' under all parameters and under general observations it was minuted that he had shown special aptitude for investigation work. The Reviewing Officer had graded this down to Good but taking an overall view and the standards applied in other cases it was felt that this officer deserved 'very good' grading and should be empanelled.

Although it was pointed out that Shri Panna Lal was being proposed for inclusion in the panel against the OPC recommendations and the OPC had gone on the basis of 5 ACRs i.e. from 1982-83 to 1986-87 (while the above minutes seem to have taken 7 years' ACRs) and based on the five ACRs which was the correct practice, the OPC recommendations should be approved, that advice was overruled and it was decided to include Shri Panna Lal's name in the panel.

(2) SMT. BALJIT MATHIYANI:

It was recorded that her gradings for

(b2)

5 years i.e. 1981-82 to 1985-86 could be taken as Very Good; Good; Very Good; Good and Very Good. Although it was noted that in 1983-84 the Reviewing Officer had down graded her from Very Good to Good, in 1985-86 she had been graded 'outstanding'. Her overall grading was clearly close to Very Good. It was further noted that considering the fact that there were few women officers, and applying the same standards applied in other cases, there was no reason to exclude her.

Although it was pointed out that the downgrading of her report for 1983-84 by the Reviewing Officer could not be brushed aside and her overall grading being 'good' her exclusion was justified, and even after her exclusion there were 9 ladies on the proposed panel, that advice was overruled and it was decided to include her name in the panel.

(3) SMT. RAMA RANI HOTA:

In her case, it was noted that but for two years i.e. 1983-84 and 1984-85 when her performance slumped to 'Good' due to some extenuating circumstances, her record for the rest of the years could easily be graded 'very good', the latest one being 'outstanding' and as she had also acquired a Diploma in Federal Taxation of USA, she richly merited inclusion in the panel, and accordingly she was also included.

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12. Respondents' counsel has argued that UPSC is a recommendatory body and the ACC is not bound to accept the UPSC's recommendations. He has urged that ACC disagreed with the gradings given by UPSC in respect of Shri Panna Lal, Smt. Baljit Mathiyani and Smt. R. R. Hota and have included them in the panel after upgrading them from 'good' to 'very good' for which reasons have been recorded. He has argued that ACC if fully competent to disagree with the UPSC's recommendations provided reasons for disagreement are recorded in writing and the prescribed procedure is followed ^{through} in respect of such cases of disagreement, which he asserts has been done in the aforementioned 3 cases. He has urged that the sufficiency or otherwise of these reasons is beyond the pale of judicial review, and as the promotions of Shri Panna Lal, Smt. B. Mathiyani and Smt. R. R. Hota are not under challenge in these OAs, no judicial interference is warranted. The Hon'ble Supreme Courts' judgments in UOI Vs. N.P. Dhamania JT 1994 (7) 465 and Anil Katiyar Vs. UOI & Ors. SLJ 1997 (1) 145 have been cited in support of these submissions.

13. We are aware that the ACC is not bound to accept the UPSC's recommendations and may disagree with those recommendations for good and sufficient reasons to be recorded in writing, the sufficiency of which is beyond the scope of judicial review. We are also aware that the promotions of Shri Panna Lal, Smt. B. Mathiyani and Smt. R. R. Hota are not directly under challenge

in these OAs. However as pointed out in para 5 above the specific direction given to the Tribunal by the Hon'ble Supreme Court in their order dated 12.2.96 quoted in full in para 4 above, is to ensure that in all cases of promotion to the post of Commissioner Income Tax a similar standard is made applicable. In otherwords we have to ensure that the applicants in these OAs before us, as well as Shri Panna Lal, Smt. B.Mathiyani and Smt. R.R.Hota are assessed on the basis of similar standards.

14. We find that on the basis of 5 years' ACRs (1982-83 to 1986-87) five out of 6 applicants before us (that is all except applicant Shri M.K. Sarkar) as well as Shri Panna Lal, Smt. B. Mathiyani and Smt. R.R.Hota were assessed by the DPC as ' good ' and not recommended for inclusion in the panel for promotion as the minimum benchmark was ' very good '. Thus a uniform standard i.e. 5 years ACRs (1982-83 to 1986-87) was made applicable by UPSC in all these cases. However, the ACC in ordering inclusion of Shri Panna Lal and Smt. B.Mathiyani in the panel took into consideration their ACRs for the years 1980-81 and 1981-82 also, which was outside the 5 years assessment period (1982-83 to 1986-87) despite it being pointed out that assessment based on 5 years was the correct practice. What is more, ACRs beyond the 5 year assessment period (1982-83 to 1986-87) were not considered by ACC in respect of the five out of the 6 applicants before us. Under the circumstance

we are compelled to hold that five out of the six applicants before us (that is all except applicant Shri M.K. Sarkar) on the one hand, and Shri Panna Lal and Smt. B.Mathiyani on the other were not assessed by ACC on the basis of similar standards.

15. In the case of applicant in OA 1305/91 Shri M.K. Sarkar, he was chargesheeted on 5.1.84 for (I) possession of disproportionate assets acquired during the period 16.8.66 to 11.10.77; (II) non-intimation of transactions pertaining to leasing of 2 houses; and (III) non-intimation of purchase of a TV set. The Enquiry Officer held charges (I) and (II) proved upon which he was dismissed from service on 29.10.86. Applicant's appeal having failed, he challenged that decision in OA No.1049/86 which was disposed of by the Tribunal by judgment dated 11.1.89 modifying the penalty of dismissal imposed on him to one of censure to be entered in his character roll. Thereupon after extensions of time for implementation of the aforesaid judgment were granted to respondents, applicant was reinstated in service on 5.6.89, and subsequently by order dated 5.1.90 the Chairman CBOT imposed the penalty of censure on the applicant and ordered that the above penalty would be deemed to have taken effect on 29.10.86 and a copy of that order was directed to be placed in his ACR folder. Aggrieved by that order applicant filed OA No.1308/91 praying that the Tribunal's judgment dated 11.1.89 be set aside and for a

direction to delete the penalty of censure from his ACR folder for the year 1986-87. That OA was heard and dismissed by judgment dated 18.9.95.

16. Meanwhile upon representations made by applicant, and in the background of the Tribunal's judgment dated 11.1.89 respondents held a review DPC in April, 1990 to consider applicants' promotion as Commissioner Income Tax w.e.f. September, 1987/April, 1988. Applicant contends that DPC which was held in September, 1987 had considered 5 years' ACRs of the officers namely for the period 1982-83 to 1986 -87, and accordingly when the review DPC met, it was expected to consider applicants' ACRs for the same period but as he had not worked under any officer for more than 3 months during the year 1985-86 and had been dismissed from service on 28.10.86, his ACRs for those 2 years could not be written and, therefore, in terms of instructions dated 10.3.89, the DPC was required to consider applicants' ACRs for the years 1980-81 to 1984-85. He states that he had reason to believe that he had earned 'very good' for each of the aforesaid mentioned 5 years but the DPC assessed him 'good' only and while doing so was unnecessarily influenced by 'censure' entry vide letter dated 5.1.90. He has contended that D & T's instructions dated 15.5.78 laid down that a censure entry in ACR cannot be a bar to promotion, and when

no CR's entries were made in 1986-87, the censure entry could not have been made for that year. It has also been contended that if an entry could have been made in the applicant's folder, the same could be done only for the period 1976-77 to which period the alleged misconduct related. It has also been argued that even officers getting 'good' grading were approved for appointment as Commissioner Income Tax by ACC, the cases of aforementioned Shri Panna Lal, Smt. Baljit Mathiyani and Smt. Rama Rani Hota have been cited.

17. In Tribunal's judgment dated 18.9.95 in OA No.1308/91 filed by the applicant whereby the said OA was dismissed, the Tribunal had categorically held that the respondents' order dated 5.1.90 communicating imposition of penalty of censure and placing a copy of the said order in the applicant's folder was perfectly justified and valid. Nothing has been shown to lead us to conclude that the said judgment dated 18.9.95 has been stayed, set aside or modified and under the circumstance, we are bound by the same. Even if as contended by applicant, a censure entry is no bar to promotion, it could not have been disregarded by the review OPC which met in April, 1990, and if as contended by the applicant his overall 'very good' remarks for the relevant period were as a result of the censure entry somewhat toned down ^{to 'good'}, it cannot be said that the review OPC's assessment suffers from any

infirmity, particularly in the light of the fact that the selections were to be made strictly on merit.

18. Unfortunately the proceedings of review OPC held in April, 1990 in respect of applicant ^{Sarkar} were not produced before us for our perusal, but if, as contended by applicant, the review OPC assessed him as 'good' and he was not recommended for inclusion in the panel because the benchmark was 'very good', what was noticed in regard to the other 5 applicants vis-a-vis Shri Panna Lal and Smt. Baljit Mathiyani and discussed in paragraph 14 above would apply in the case of applicant Shri M.K. Sarkar also. In this connection, it is relevant to mention that the respondents have not specifically rebutted applicant Shri M.K. Sarkar's assertion that while he was given 'good' grading but was not promoted, Shri Panna Lal, Smt. Baljit Mathiyani and Smt. Rama Rani Hota who also got only 'good' grading were subsequently included by the ACC in the panel. This assumes importance in the light of the Hon'ble Supreme Court's directions to the Tribunal to ensure that in all cases of promotion to the post of Commissioner Income Tax, a similar standard is made applicable.

19. In the result, these six OAs are disposed of with a direction to the respondents to consider inclusion of these applicants in the panel for promotion as Commissioner Income

(10)

Tax with effect from September, 1987/April, 1988
by making applicable ^a similar standard as
applied in the cases of Shri Panna Lal, Smt.
Baljit Mathiyani and Smt. Rama Rani Hota. These
directions should be complied with, within
4 months from the date of receipt of a copy
of this judgment. No costs.

20. Let a copy of this judgment be placed in
each of aforementioned six OAs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER(J).

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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