

Central Administrative Tribunal
Principal Bench, New Delhi.

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New Delhi, this the 13th day of July 1995. OA No.1787/91

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

K.K.Solanki
R/o 310, K.K.Nagar
Rana Park, Ghat Lodiya
Ahmedabad - 380 061.
(By Advocate: Shri P.P.Khurana)

..Applicant.

Versus

Union of India through

1. The Secretary
Ministry of Finance
Department of Revenue
North block
New Delhi.
2. Central Board of Direct Taxes
through its Chairman
North Block
New Delhi
(By Advocate: Shri R.S.Agarwal)

...Respondents.

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The grievance of the applicant who was working as Income Tax Officer Group-B since 24.1.1977 is that though no disciplinary proceeding was pending against him and though he came within the zone of consideration ~~for~~ for promotion, he was not/considered by the DPC held in the year 1988/89 and the DPCs held in the year 1990/91 the recommendations were kept in sealed covers against rules, with the result that he had to remain as Income Tax Officer while several of his juniors were promoted as Assistant Commissioners. Therefore, the applicant prays that the respondents may be directed to promote the applicant with effect from the date his immediate junior was promoted, as Assistant Commissioner of Income Tax and for that purpose to hold a review DPC for the various DPCs commencing with the first DPC wherein the applicant was superseded. He has alleged in the application that in the year 1986, an adverse entry was made in his A.C.R. as follows:

" Failure to discharge his duties as an
Invigilator and he has shown lack of devotion
to duty."

and that this should not have stood in the way of his being promoted.

2. When the application was admitted by order dated 9.8.1991, the respondents were directed to open the sealed cover immediately and give effect to the recommendations made by the DPC in regard to the suitability of the applicant for promotion within a period of one month from the date of receipt of that order.

3. The respondents in their detailed reply statements contend that the applicant was not promoted pursuant to the DPC held in the year 1988/89 as the DPC assessed him not fit for promotion, that the case of the applicant was considered by the DPC held in January/February 1990 but this time the recommendations of the DPC in his case were kept in sealed cover as his integrity was not certified at the relevant time. In March 1991 also the DPC kept its recommendations in sealed cover in accordance with the relevant rules in force at that time. Further they contend that the DPC had assessed the applicant 'not yet fit' for promotion in its meeting in Jan./Feb. 1990 also. Pursuant to the directions of the Tribunal contained in the interim order, the respondents state that the sealed cover relating to the DPC which met in March 1991 was opened and on the basis of the recommendations contained therein, the applicant was promoted w.e.f. 27.3.1991 as Assistant Commissioner of Income Tax (Junior Scale) on regular basis and his seniority was fixed at S.L.No.85-A below Shri M.D.Soyantar and above Shri D.S. Sallan. His non-promotion pursuant to the DPC which met in 1989/90 was on account of the fact the the DPC had assessed him not yet fit for promotion and as he has been promoted when cleared by the DPC, the respondents contend that the applicant does not have any subsisting grievance to be redressed. They have also referred to the case of the applicant regarding the adverse remarks and state that even after toning down the adverse remarks, a part of it remained and this also forms part of the service records.

4. We have heard Shri P.P.Khurana, counsel for the applicant and Shri R.S.Agarwal for the respondents. Shri Khurana argued that the

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reply statement of the respondents that the applicant was not promoted pursuant to the DPC in the year 1989/90 is quite vague and that the reason as to why the applicant was not found fit has not been disclosed. It is settled law that the DPC when adjudging an official not fit for promotion on an overall assessment of the service record need not state any reason for such supersession. There is no allegation of any malafide against the DPC nor is there any case for the applicant that the DPC has taken into consideration any extraneous matter. Under the circumstances, we are of the considered view that we need not doubt the fair manner in which the respective DPCs had dealt with the case of the applicant.

5. Learned counsel for the applicant further argued that while the respondents in their counter have stated that the recommendations of the DPC which met in March 1990 were kept in sealed cover, there is no indication as to when the sealed cover was opened, and therefore the contention that the DPC had assessed him not yet fit cannot be accepted. We do not find any merit in this argument also. An interim order was issued directing the respondents to open the sealed cover and in accordance with the recommendations, promotion be given to him within a period of 3 months. From the categorical stand in the reply statement that the DPC assessed the applicant not yet fit for promotion in 1990, it is evident that the sealed cover had been opened and the competent authority found the recommendations of the DPC to the effect that the applicant was not yet fit for promotion. On the basis of the recommendations of the DPC in March 1991, the applicant was promoted with effect from the due date and has been assessed him due seniority. The applicant is not entitled to anything more than this.

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6. In the light of what is stated in the foregoing paras, we do not find any merits in the application. As the applicant has already been promoted pursuant to the DPC which met in the year 1991, we hold that the applicant is not entitled to any further relief. The application is disposed of accordingly.

No costs.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

A.V. Haridasan
(A.V. Haridasan)
Vice Chairman (J)

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