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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2056/91

New Delhi this the 2nd day of May, 1995

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

Hon'ble Dr. A. Vedavalli, Member(J).

Shri S.C. Nagpal,
S/o Late Shri Ishwar Datt Nagpal,
Commissioner of Income Tax,
Agra (UP).

...Petitioner.

Applicant in person.

Versus

Union of India,
through its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

...Respondent.

By Advocate Shri R.S. Aggarwal.

ORDER

Hon'ble Shri N.V. Krishnan, Vice Chairman(A).

The applicant, Commissioner of Income-Tax, is aggrieved by the letter dated 29.10.1990 (Annexure 'G') which informs him that his representation relating to revision of seniority in the grade of Commissioners of Income Tax has been rejected.

2. The brief facts are that a DPC was held for selection of Commissioners of Income-Tax in September, 1985. In pursuance thereof certain officers, including the applicant's juniors, were promoted by the order dated 19.4.86 (Ann.A). The applicant was superseded. Subsequently, another DPC meeting was held in October, 1986, as a result of which the applicant was promoted as Commissioner of Income-Tax by the order dated 10.2.1987. The applicant states that the Central Board of Direct Taxes (CBDT) felt a need to hold a review DPC relating to his case as considered by the

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DPC held in September, 1985 and accordingly such a review DPC was held on 16.8.1986. The case of the applicant was considered and this review DPC revised its earlier recommendations and decided to include the name of the applicant also in the panel prepared by the 1985 DPC. This review DPC consisted of the Chairman of the UPSC and two members from the Central Board of Direct Taxes. The respondents did not pass any orders on the recommendations of this review DPC. Instead, a fresh DPC meeting was held in October, 1986 and he was promoted by the order dated 10.2.1987.

3. Coming to know about the review DPC, the applicant made a representation in this behalf seeking promotion on the basis of the recommendations of the review DPC (Annexure 'C') along with his juniors. This was followed by the letters dated 8.8.1988 (Annexure 'D') and 11.5.1990 (Annexure 'E'). In the last representation he claims revision of his seniority in the rank of Commissioner of Income Tax. That has been rejected by the impugned Annexure 'F' letter dated the 6th August, 1990. Hence, he has filed this O.A. to direct the respondents to give effect to the recommendations of the DPC in August, 1986 and give him due seniority in the cadre of Commissioners of Income Tax.

4. The respondents have filed a reply in which it is contended that the recommendations of the review DPC which met on 11.8.1986 were considered by the competent authority which did not approve of it. This authority held the proceedings of the review DPC as invalid, on the ground that the circumstances did not warrant a

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review of the DPC held in September, 1985 which had considered the case of the applicant for promotion to the grade of Commissioner of Income Tax.

5. The averment made in the application is that one year's Character Roll was not considered by the DPC which met in September, 1985. This related to the Character Roll for the period from 1.1.1980 to 26.7.1980. Therefore, the CBDT felt that injustice has been done to the applicant and hence it is suggested that a review DPC should reconsider the matter. The proposal of the CBDT was accepted by the UPSC which held the review DPC in August, 1986 and after considering this Character Roll it recommended the inclusion of the applicant in the panel prepared by the DPC which met in 1985.

6. When the matter was heard earlier, we directed the respondents to file an affidavit on the following points:

- i) The periods for which the ACRs were considered by the DPC.
- ii) Was the ACR of the applicant from 1.1.80 to 26.7.80 required or not required to be considered by the DPC? If the answer is the latter, the respondents should indicate the periods for which the ACR record of the applicant was considered.
- iii) The reasons for rejecting the recommendations of the review DPC by the competent authority should be stated.
- iv) Was the rejection done in accordance with the procedure laid down for this purpose?

7. An affidavit has been filed by the Under Secretary, Ministry of Finance. It is stated therein that the minutes of the DPC do not specify the years in respect of which the ACRs were considered. This is, however, regulated by the instructions issued by the

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DOPT dated 30.12.1976. The affidavit, however, admits that the ACRs for the period from 1.4.1980 to 31.3.1981 (financial year 1981) was required to be considered by the DPC. The ACR in respect of this financial year was recorded in two separate reports, one from 1.1.1980 to 26.7.1980 and another from 1.8.1980 to 31.3.1981. Both the reports were made available to the DPC. The reply of the respondents states that the ACR for the period from 1.1.80 to 26.7.80 was not considered by the DPC held in 1985.

8. The only reason why the competent authority did not consider the recommendation was that "it held that the review DPC itself was not called for at all keeping in view the circumstances of the case. The review itself was invalid."

9. We have heard the parties. Admittedly, the ACR of the applicant for the year 1.4.80 to 31.3.81 ought to have been considered by the DPC. This could be done only by considering both the ACRs for the period from 1.1.1980 to 26.7.1980 - which subsumes the report for the period from 1.4.80 to 26.7.80 - as well as the report for the period from 1.8.80 to 31.3.81. The latter alone was considered. Admittedly, the former was not considered. Therefore, the ACR for the year 1980-81 was not properly considered.

10. We are unable to accept the contention of the respondents that this is not a good ground for holding a review DPC meeting.

11. We are surprised by the stand taken by the respondents. There is no denial of the averments that the review DPC was held at the initiative of the Chairman of the CBDT. They have no case that the review

DPC was constituted illegally by an incompetent authority. The reason given by this authority apparently appealed to the UPSC which agreed to hold the review DPC. When that review DPC was conducted, it transpired that, the earlier decision to exclude the applicant from the panel was wrong and that his name should be included in the panel. This shows that omission to take into account the ACR for the period from 1.1.1980 to 26.7.1980 was a vital which adversely affected the recommendations of the DPC in so far as it concerned the applicant. This itself provides the justification for the review DPC.

12. The respondent has contended in his reply that a review is not warranted for which they rely on the judgement of the Supreme Court in Northern India Caterers Vs. Lt. Governor, Delhi, AIR 1986 SC 674. That judgement is entirely irrelevant. It deals with the statutory powers of review. These principles have no application for the holding of a review DPC. In the reply itself, it is admitted that the proceedings of any DPC can be reviewed only if it has not taken all facts appropriately into consideration. We are of the view that the omission of the DPC in not considering the report from 1.1.80 to 26.7.80, though it was placed before it, amounts to ignoring material particulars required to be considered necessitating a review.

13. That apart, we further hold that when a review DPC has been properly constituted it is for that body and not for any other authority to determine whether the reason for which the proceedings of the DPC are sought to be reviewed are sound and adequate to reconstitute such review. As review DPC decided to review the

proceedings for the reason mentioned above, its decision to hold the review cannot be questioned. The competent authority can only disagree with the recommendations on merits.

14. In the circumstance, we allow this O.A. and quash the impugned Annexure 'G' letter dated 29.10.90. We declare that the review DPC was properly held for good and sufficient reasons. The respondent is, therefore, directed to consider the recommendations of the review DPC in accordance with law and pass necessary orders within a period of two months from the date of receipt of this order. We make it clear that in case the recommendation of the review DPC is accepted, the applicant would be entitled to promotion with effect from the date on which any person junior to him was promoted on the basis of the recommendations of the 1985 DPC and he shall be given the benefit of arrears of pay from such date, within a period of two months from the date of issuing orders of such promotion. In the circumstance, there will be no order in regard to costs.

A. Vedavalli

(DR. A. VEDAVALLI)

MEMBER 'J)

'SRD'

N. V. Krishnan

(N. V. KRISHNAN)

VICE CHAIRMAN(A)

MP for exec.