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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CP No.512/2004

In

MA-2622/2004

In

OA No.2926/2004

New Delhi this the 22nd day of March, 2005.

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)**

J.S. Singhal,
S/o Shri Maidhan Singhal,
R/o House No.100, Sector-6,
R.K. Puram,
New Delhi.

-Applicant

(By Advocate Shri K.C. Mittal)

-Versus-

1. Union of India through
Shri R. Chandra Shekharan,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

2. Mrs. Shobha Majumdar,
Chairperson, Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

-Respondents

(By Advocate Shri V.P. Uppal)

ORDER

Mr. Shanker Raju, Hon'ble Member (J):

This CP is directed in an order passed on 17.12.2002 in OA-2926/2004, where the following reliefs have been sought:

“(a) Direct the Respondents to hold DPC for promotion to the post of Assistant Commissioner of Income Tax as per the instructions issued forthwith for vacancy year 1st April 2003-31st March 2004 and also for the vacancy year 1st April 2004-31st March 21, 2005 and grant promotion to the applicant with retrospective date against the vacancy year of 1st April 2003 – 31st March, 2004 with all consequential benefits.

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(b) Direct the Respondents to grant ad hoc promotion with retrospective effect and with all consequential benefits in the event the Respondents are not able to hold regular DPC and grant regular promotion before 31st December 2004.

(c) Pass such other orders or issue such direction/directions as may be deemed fit in the interest of justice.

(d) Award costs to the applicant."

2. The following directions were issued to respondents:

"In the result, we dispose of this OA with a direction to the respondents to immediately take up this issue of holding DPC with the UPSC and to ensure that the recommendations are issued by UPSC and received by them latest by 26.12.2004 and thereafter the respondents, subject to the result of the DPC on suitability of the applicant in accordance with instructions, should consider him for promotion before his superannuation and in that event he shall be entitled to all consequential benefits. No costs."

3. Applicant though was to be considered for promotion to the post of Assistant Commissioner of Income Tax before his retirement on superannuation on 31.12.2004, it is contended, as transpired from the proceedings that by an order dated 15.2.2005 DPC met and considered the case of applicant but as he has not come in the zone of consideration was not promoted.

4. The remaining grievance of applicant as pointed out by the learned counsel for applicant is that whereas in OA-1810/2004 his prayer was for consideration of promotion against the vacancies for the year 2004-2005 which has been re-iterated in OA-2926/2004 yet the respondents have not held the DPC for the vacancies for the year 2004-2005.

5. Learned counsel for applicant states that as per the decision of the Apex Court in **N.R. Banerjee v. Union of India**, 1997 SCC (L&S) 1194, though one has no indefeasible right to be promoted but a corresponding obligation is rested on Government to meticulously adhere to the limitation of holding of DPC. In the above conspectus learned counsel states that

as ACC is not associated in the promotion as per the schedule for non-ACC cases ACR is to be completed by July of the year and a proposal is to be sent to the UPSC and DPC is to be held in January of the next year and by March 31 approved select panel is to be issued.



6. In the above conspectus it is stated that these time limits are obligatory and mandatory because by not timely holding DPC etc. a right of a government servant who is retiring is adversely affected and he is prejudiced by not being promoted or considered.

7. On the other hand, respondents' counsel vehemently opposed the contentions and stated that applicant could have come earlier for his non-promotion whereas he has come barely a month before his retirement. Moreover, it is stated that time till 15.2.2005 was accorded to respondents to comply with the directions in MA-2237/2004 in OA-1810/2004 on 20.12.2004.

8. It is stated that respondents have sent a proposal for holding the DPC and issuance or order before 31.12.2004 vide letter dated 24.12.2004 and promotion orders have been issued on 15.2.2005 but applicant has not come within the zone of consideration.

9. As regards DPC for the year 2004-2005 it is contended that it would take at least six months time for the UPSC to hold DPC, applicant would be considered but in the light of rules and instructions cannot be promoted before his retirement on superannuation.

10. We have carefully considered the rival contentions of the parties and perused the material on record. On perusal of our order passed in OA-2926/2004 we are of the view that the relief of applicant for promotion pertaining to the vacancy for the year 2003-2004 as well as 2004-2005 was taken cognizance of. By referring to the decision in N.R. Banerjee

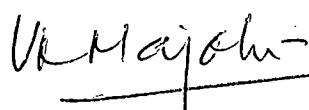
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(supra) directions were issued to consider applicant and to promote him before superannuation with all consequential benefits. This has been in the wake of the fact that applicant was retiring on superannuation on 31.12.2004. We also find that respondents have not adhered to the mandatory time limit as reflected and ruled by the Apex Court in **N.R. Banerjee (supra)**.

11. Be that as it may, once a DPC was held by the UPSC for the vacancy year 2003-2004 applicant has not come within the zone of consideration. As regards vacancy year 2004-2005, on holding of DPC applicant would be considered for promotion, as stated by the learned counsel for respondents at the Bar. Consequential benefits as ordered in the OA, law shall take its own course. In this view of the matter, finding no willful disobedience on the part of respondents, CP is dismissed. Notices are discharged.


 (Shanker Raju)
 Member (J)

'San.'


 (V.K. Majotra)
 Vice-Chairman(A)

22.3.05—