

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2707/92  
M.A. 2820/97  
M.A. 2985/97

New Delhi this the 29th Day of January 1998

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)  
Hon'ble Shri S.P. Biswas, Member (A)

Ms. K. Mythili Rani, IRS,  
Deputy Commissioner of Income Tax,  
251-3RT, Sanjeeva Reddy Nagar,  
Hyderabad-500 038

Petitioner

(By Advocate: Shri P.P. Khurana)

-Versus-

1. Union of India through the  
Secretary, Ministry of Finance,  
Department of Revenue, North Block,  
New Delhi.
2. Central Board of Direct  
Through its Chairman,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi.

(By Advocate: Shri V.P. Uppal)

ORDER (Oral)

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case is a 1979 IRS batch officer. The DPC held for the purpose of promotion to the post of Deputy Commissioner of Income is stated to have given for him an overall rating as "Good". Subsequently in 1989 the DPC considered her fit for promotion and promotions were granted even though the results of that DPC were withheld under sealed cover due to pendency of the disciplinary proceedings.

2. The disciplinary proceedings was initiated in accordance with rules on the charge that she purchased a second hand Premier Padmini Car otherwise for some undue consideration from a firm, namely, M/s.

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Wines which was an assessee under her official dealings. The Inquiry Officer in his report held that the charge were not proved. On the basis of the said findings, the disciplinary authority passed an order under Rule 15 of the CCS (CCA) Rules dropping the charges as well as the disciplinary proceedings initiated against the petitioner. Thereafter, the results of the DPC kept in "sealed cover" were open and promotions were given with effect from 1989 since she could not make grade in the DPC held in 1988. It was stated on behalf of the petitioner that about 130 officers junior to her were promoted due to the fact of her not having made the necessary grade (for the purpose of promotion) in the DPC held in March 1988. After notice, the respondents stated that the case of the petitioner was considered by the DPC in accordance with the rules and five years Confidential Reports were considered by the said DPC beginning from 1982-83 to 1986-87. The DPC had given an overall grading of "Good". The counsel for the petitioner contended that there are genuine apprehensions that the gradings in the ACR of 1986-87 was deliberately watered down on the basis that at the given time the aforesaid disciplinary proceedings was pending and the ACRs written could probably be by one of the officers who happened to be in the know of the said disciplinary proceedings or the vigilance report. In the circumstances the fact that subsequently the said charges have been withheld by the respondents themselves, the confidential remarks for the year 1986-87, written in the background of the aforequoted proceedings, should have been ignored and

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the case of the petitioner reconsidered by the DPC accordingly. The main issue for consideration, therefore, is whether the ACRs for the year 1986-87 has been "coloured" because of previous allegations/charges which have been not only found not proved by the Inquiry Officer but also dropped by the disciplinary authorities themselves.

3. The counsel for the respondents on the other hand submitted that even though the fact of the pending chargesheet at the relevant time during the year 1986-87 formed the basis of the entries in the ACRs of that year and that the said chargesheet was withdrawn subsequently can only result in the benefit of deletion of the appropriate entry in the "integrity" column that could have been entered in the confidential report of the petitioner.

4. In the circumstances we had requisitioned the relevant ACR file and we find that the entries made in the year 1986-87 was not complete in all respects. It was also noticed that there were no specific grading given by the reporting officer, reviewing officer or by the accepting officer except that the accepting officer has apprehend a note received from the vigilence section. By looking into the overall report for the year 1986-87 we are of the opinion that the same would not have been so but for the fact of the charges then pending against the petitioner. That being so, once the chargesheet have been inquired into and the inquiry officer has written a finding that the charges are not proved and that the chargesheet have been withheld, the

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entries made in the year 1986-87 in this regard also deserved to be ignored for the purpose of career prospects of the petitioner. In other words, the benefits of reassessment legally due to the applicant were not reconsidered and not given. And that made all the difference in determining the grading considered necessary for promotion.

5. The only order in the circumstances that we can issue is that the respondents may consider the five year ACRs records of the petitioner ignoring the year 1986-87 for the purpose of holding a review DPC as on Merit and reconsider the comparative merit of the petitioner vis-a-vis other colleagues of the petitioner considered in the same DPC of 1998 as on Merit. We make it clear that the ACRs to be considered for the five years by the DPC shall be the 1981, 1982 till 1985-86. The said exercise shall be completed within four months from the date of receipt of a copy of this order and the same shall be communicated to the petitioner within two months thereafter by which time the order of the DPC shall be given full effect.

6. We make it very clear that we are not setting aside the recommendations of DPC held in March 1988 which may have the effect of upsetting service conditions of other colleagues of the petitioner. We are setting aside the assessment of DPC for the applicant for only 1988 that has been wrongly considered by the said DPC because of lapses of

reporting/reviewing officers and review DPC should have been held considering all the persons eligible for promotion as on merit in 1988. (A)

7. The submission of the petitioner that the ACRs of 1986-87 as well as 1987-88 might have had some bearing on the DPC held in March commands acceptance.

8. The OA is allowed to the extent aforesaid with no order as to costs.

  
(S.P. Biswas)  
Member (A)

  
(Dr. Jose P. Verghese)  
Vice Chairman (J)

\*Mittal\*