

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

46

O.A. No. 2977/92
T.A. No.

199

DATE OF DECISION 22.4.98

Sh.N.A.Khan

Petitioner

Sh.P.P.Khurana

Advocate for the Petitioner(s)

Versus

UOI & Ors.

Respondent

Sh.V.P.Uppal

Advocate for the Respondent

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not? ☒ *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? ☒ *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

OA No. 2977/1992.

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New Delhi this the 22 th day of April, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri K. Muthukumar, Member (A)

In the matter of

N.A. Khan,
S/O Late Janab G. Khan,
R/o Tiwari Chawl, Jarhabhata,
Bilaspur (MP)

(By Advocate Shri P.P. Khurana)

..Applicant

Vs

Vs

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

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

..Respondents

(By Advocate Shri V.P. Uppal)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant is aggrieved by the order passed by the respondents dated 26.2.1992 rejecting his representation for promotion as Assistant Commissioner of Income Tax (ACIT (Junior Scale)) while other officers junior to him have been promoted by order dated 10.11.1991.

2. We have heard the learned counsel for the parties at length. Admittedly, three Departmental Promotion Committees (DPC) have been held in March, 1991, October, 91 and December, 1991 to consider promotion of eligible officers to the post of ACIT. According to the respondents the applicant was not promoted to the grade of ACIT (Junior Scale) for want of comparative merit though he was duly considered by the DPCs held in March, 91, October, 91 and December, 1991 in which he was graded as 'Good' whereas the officers with better grading were available and promoted. The promotion to the post of ACIT is by way of selection. The applicant has submitted that

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through-out the relevant period of assessment for promotion to the post of ACIT, his ACRs are 'Verg Good'. Shri P.P.Khurana learned counsel for the applicant has submitted that although the Reporting Officers have given much higher grade to the applicant right from 1986-1991, the Reviewing Officers have toned it down. He has, therefore, contended that when there has been disagreement with regard to assessment of work of the applicant between the Reporting Officer and the Reviewing Officer, these should have been communicated to the applicant for his comments and also to apprise him that his work ~~is~~ required to be improved. He, however, submits that this was not done. He has relied on the judgment of the Supreme Court in U.P.Jal Nigam and Others Vs.Prabhat Chandra Jain and Others (1996(2)SCC 363, and the Tribunal judgements in Udai Krishna Vs.Union of India(1996(33)ATC 802.

3. Learned counsel for the applicant has submitted that by non-communication of the down-grading of the ACRs by the Reviewing Officer, the applicant has been adversely affected and no reasons for the same have also been given by the authority. He has also submitted that non communication of the down-grading of the ACRs which cannot be taken as 'Adverse Remarks' is also contrary to the Govt., of India's Instructions.

4. in U.P.Jal Nigam and Others Vs.Prabhat Chandra Jain and Others(supra), the Supreme Court has held:

"...The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element

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compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidenceals in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidenceal reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise they shall be communicated as such. It may be emphasised that even a positive confidenceal entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain."

Therefore, relying on the observations of the Supreme Court in UP Jal Nigam and Others and Tribunal's order in Udai Krishna's case (supra), Shri P.P.Khurana, learned counsel for the applicant has submitted that down-grading of the remarks by the Reviewing Officers without communicating^{it} to the applicant and without giving reasons for doing so, could not have been taken into account by the DPCs held in the year 1991.

5. Another ground submitted by Shri Khurana, learned counsel for the applicant is that by the respondents order dated 21.10.92 (copy placed on record), applicant's representations were disposed of by them which reads as follows:

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"..The Hon'ble CCIT has decided that the adverse remarks given in Column 9(d) and 10 of Part-IV of the C.R. for the year 1990-91 are justified and they have been sustained. However, the remarks given in Col.No.9(b) and 9(e) have been deleted."

As the order deleting certain remarks in the ACR for the year 1990-91 has been given only in October, 1992 ^{not} what would have been placed before the DPC held in 1991 is the original ACR for the year 1990-91, including the portion which has since been deleted. On this point also learned counsel for the applicant submits that there is good reason for directing the respondents to hold review DPC. He relies on the judgment of this Tribunal in M.P.Badlan Vs.UOI & Ors (OA No.2120/91) decided on 4.9.1995.

6. The respondents in their reply have submitted that ~~as~~ according to the relevant instructions on the subject, only adverse remarks need to be communicated to the officer reported upon, ^B and there is no provision for conveying the toned-down remarks recorded by the Reviewing Officer in the ACR. They have submitted that earlier instructions wherein fall in standards in relation to his past performance, as reflected through the confidential report need to be communicated have been withdrawn by O.M. dated 30.10.83. They have submitted that the applicant has presumed that his work was assessed in his favour which is not correct. Shri Uppal, learned counsel for the respondents has submitted that the judgement in UP Jal Nigam and Others case (supra) is not applicable to the present case. He has also relied on the judgment of this Tribunal in Smt.Nutan Arvind Vs.UOI & Ors (OA 1796/89) decided on 22.12.1994. He has submitted that on appeal against this judgment the Supreme Court has upheld the order of the Tribunal. He has submitted that the respondents have followed the relevant instructions

where only adverse remarks have been communicated and DPCs have been held in accordance with the rules on the basis of comparative merit.

7. Applicant has filed rejoinder more or less reiterating the averments made in the OA. According to him, Reviewing Officer is not a person who has to assess the work of the officer reported upon and since the Reporting Officer has given higher grading which has been entirely toned-down by the Reviewing Officer without communicating it^{to} to the applicant, the toned down remarks should not have been taken ^{into account} by the DPCs held in 1991.

8. Learned counsel for the respondents has also submitted for our perusal the ACRs of the applicant for the years 1986-1991. By the respondents order dated 21.10.1992 they have taken a decision to retain some part of the adverse remarks and delete some other remarks in the ACR of the applicant for the year 1990-91. The applicant has submitted that the remarks of the Reporting Officer, as reflected during the relevant period 1986-1991 have been toned down by the Reviewing Officer without giving any reasons. From the records we find the position as follows:

	<u>Reporting Officer</u>	<u>Reviewing Officer</u>
1986-87	Very Good	
1987-88	Outstanding	Good
1988-89	Outstanding	Very Good
1989-90	Outstanding	Very Good
1990-91	Good	Good
		Average

9. Shri P.P.Khurana, learned counsel for the applicant has submitted that the main grievance of the applicant relates to the ACR for the year 1989-90 where the remarks of the Reporting Officer has been toned down from 'Outstanding' to 'Good' by the Reviewing Officer which has adversely affected the applicant. The respondents in their reply have submitted that the ACR of the applicant are a matter

of record and are not based on the physical achievement of the target which has to be taken into account but also the quality of the work put in by an officer during the entire period of the report. We ^{also} note from the ACR for the year 1990-91 that Reporting Officer has stated that the applicant worked under him for about two months. Since it was a new area of work ^{for} which he had no previous experience, his performance as a whole is graded as Good. ^{The} Department of Personnel and Training O.M. dated 23.9.85 provides as follows:

" A question has been raised as to the course of action to be adopted when, in the case of an officer, there is no Reporting Officer having the requisite experience of three months or more during the period of report, as a result of which no Reporting Officer is in a position, to initiate the report. It has been decided that where for a period of report there is no Reporting Officer with the requisite experience to initiate the report, the Reviewing Officer himself may initiate the report as a Reporting Officer, provided the Reviewing Officer has been the same for the entire period of report and he is in a position to fill in the columns to be filled in by the Reporting Officer. Where a report is thus initiated by the Reporting Officer, it will have to be reviewed by the officer above Reviewing Officer."

10. Admittedly, the Reporting Officer for 1990-91 ACR did not have necessary period to initiate ^{the} report and, therefore, the respondents have not followed the relevant instructions of the Govt. of India in this regard.

11. Having regard to the judgment of this Tribunal in M.P. Badlan's case (supra) and the order passed by the respondents dated 21.10.92 deleting certain adverse remarks in the ACR for the year 1990-91 we are of the view that the respondents should consider the case of the applicant by convening a review DPC taking into account the above facts, including deletion of certain

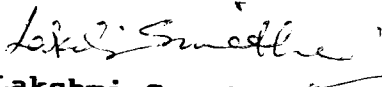
adverse remarks in the ACR for the year 1990-91.

12. From the ACRs mentioned in paragraph 8 above, it is seen that for the relevant period 1986-91, the Reviewing Officers have toned down the remarks of the Reporting Officers. Having regard to the judgment of the Supreme Court in UP Jal Nigam's case(supra), it cannot be stated that consistently down-grading of the reports by the Reviewing Officers for the relevant period 1986-91, has not adversely affected the applicant for which — no reasons have also been recorded by the Reviewing Officers.

13. For the reasons given above, the OA is ^{partly allowed and 1/2} disposed of with a direction to convene a Review DPC to consider the applicant's case, taking into account the observations made above. This shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. If applicant is selected for promotion to the post of Assistant Commissioner of Income Tax, he shall be entitled to consequential benefits in accordance with law. O.A. is partly allowed as above.

No order as to costs.


(K. Muthukumar)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

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