

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

R.A. No. 248 of 1997
in
O.A. No. 04 of 1992

New Delhi, dated the 4th MAY 1998.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Sukhdev Chand,
Dy. Commissioner of Income Tax (Appeals),
Central Range-1,
Calcutta. REVIEW APPLICANT

(By Advocate, Shri P.P. Khurana)

VERSUS

1. Union of India through
the Secretary,
Dept. of Revenue,
Ministry of Finance,
North Block,
New Delhi-110001.

2. Central Board of Direct Taxes through
its Chairman,
North Block,
New Delhi-110001. RESPONDENTS

(By Advocate: Shri V.P. Uppal)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

In this R.A. a review has been sought of common judgment dated 12.9.97 disposing of six OAs including O.A. No. 04/92 Sukhdev Chand Vs. UOI.

2. Applicant in O.A. No. 04/92 Shri Sukhdev Chand as well as applicant in O.A. No. 2869/92 Shri J.R. Tamta along with applicants in two other OAs namely OA-2751/92 and O.A. No. 825/93 had sought direction to respondents for promotion to the post of Commissioner of Income Tax (CIT) in pursuant to DPCs recommendations held in October, 86, Sept. 87 and April, 88 on the basis of seniority-cum-merit. All the applicants were in the feeder

category of Dy. Commissioner of Income Tax and they alleged that their juniors were promoted although applicants had been found fit and suitable by the DPC.

2. Those OAs were heard and disposed of by judgment dated 20.1.94. The Tribunal noted that the only question which fell for consideration in those four OAs was whether promotion to the category of Commissioner of Income Tax (CIT) was governed by principle of selection on merit, or on the basis of seniority subject to rejection of the unfit and unsuitable. The Tribunal in its aforesaid judgment held that promotion to the category of CIT had to be made on the basis of selection on merit and not on the basis of seniority alone and disposed of the four O.As.

3. Against that judgment Shri sukhdev Chand filed C.A. No. 4172/96 and Shri Tamta filed C.A. No. 4173/96 in the Hon'ble Supreme Court which was disposed of by order dated 12.2.96. In that order the Hon'ble Apex Court specifically noted that four other matters were pending before the CAT, PB where similar questions namely whether grading as 'Good' entitled an incumbent for promotion to the post of CIT on selection on merit, were to be considered. Holding that in all such cases a uniform policy should be adopted in the matter of promotion by way of selection of merit and further

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observing that the appellants' case should also be considered along with such pending matters so that different standards were not applied, the Hon'ble Supreme Court set aside the impugned judgment dated 20.1.94 and sent the matter back to the CAT, PB so that the appellants' cases were considered along with other pending matters, with a further direction that the Tribunal should ensure that in all cases of promotion to the post of CIT a similar standard was made applicable.

4. Accordingly the Tribunal heard the O.A. No. 4/92 Sukhdev Chand Vs. UOI together with O.A. No. 2969/92 J.R. Tamta Vs. UOI along with four pending O.As namely O.A. No. 1305/91, O.A. No. 482/92, O.A. No. 3182/92 and O.A. No. 454/94 all together.

5. During hearing it was noticed that Shri Panna Lal, Smt. Baljit Mathiyani and Mrs. Rama Rani Hota who had only been assessed as 'Good' by the DPC had been promoted to the grade of CIT in Sept. 1987/April, 1988 while applicants, in the six OAs who had also secured 'Good' grading by the DPC had not been promoted. Having regard to the Hon'ble Supreme Court's directions, the six OAs were disposed of by the ^{impugned} ~~affirmed~~ judgment dated 12.9.97 with direction to respondents to consider inclusion of these six applicants in the panel of promotion as CIT w.e.f. Sept. 87/Apr. 88 by making applicable a similar standard as was applied in the cases of Shri Panna Lal, Mrs. Baljit Mathiyani and Mrs. R.R. Hota.

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6. In the R.A. before us it is now contended that while in the five other OAs the reliefs prayed for were for review of DPC meetings of Sept. 87/Apr. 88, in the case of the applicant, it was for review DPC meeting held from the year 1985 to April 1988. It has been stated that the Hon'ble Suprme Court's order nowhere stipulated that such an exercise would be limited to the DPCs of Sept. 87/Apr. 88 only. It has also been stated that one Shri V.K. Gupta who had been graded as 'Good' in the October, 1986 DPC was promoted as CIT whereas Review Applicant who was also graded as 'Good' in that DPC was not so promoted. It is stated that Shri V.K. Gupta had also filed O.A. No. 825/93 asking for same relief as prayed for by the review applicant and that O.A. like O.A. No. 4/92 was dismissed by judgment dated 20.1.94, but while the review applicant had filed an SLP Shri Gupta had "managed his promotion from retrospective date from the respondents", and this fact was brought to the notice of Tribunal vide an M.A. filed on 16.8.97. It is therefore contended that there is an error apparent on the face of the record in as much as the impugned judgment dated 12.9.97 failed to direct respondents to consider the review applicant's promotion from October, 86 by applying the same yardstick as applied in the case of Shri V.K. Gupta.

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7. We have heard Shri P.P. Khurana for the review applicant and Shri Uppal for respondents.

8. Shri Uppal has invited our attention to the Hon'ble Supreme Court's order dated 12.2.96. By that order, while setting aside the Tribunal's order dated 20.1.94 the cases of appellant Shri Sukhdev Chand and appellant Shri Tamta were remanded back to the CAT, PB so that their cases could be considered along with other pending matters for disposal on the basis of merit assessment through adoption of a uniform yardstick. In other words the two cases remanded by the Hon'ble Supreme Court along with the 4 cases pending in the Tribunal were to be considered and disposed of through adoption of a common yardstick. Such a uniform yardstick was the one applied in the cases of Shri Panna Lal, Mrs. B. Mathiyani and Mrs. R. R. Hota which was now to be applied to the aforesaid 6 (2 + 4) cases, which was done vide impugned judgment dated 12.9.97. In this view of the matter the case of Shri V.K. Gupta does not form part of that common yardstick and stands on a different footing. In fact, in MA No. 144/94 filed by applicant Shri Sukhdev Chand in O.A. No. 04/92 he had himself cited only the cases of Shri Panna Lal in so far as DPC meeting of Sept., 1987 and Mrs. B. Mathiyani and Mrs. R. R. Hota

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in so far as DPC meeting of April, 1988 was concerned, in the additional grounds urged in support of his pleadings and no mention was made of Shri V.K. Gupta's case in relation to the October, 1986 DPC.

11. In the light of the above it cannot be said that the ingredients of Sec. 22(3)(f) read with Order 47 Rule 1 C.P.C. are satisfied in the present case, to warrant review of the impugned judgment dated 12.9.97. The R.A. is rejected.

A. Vedavalli

(DR. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

/GK/