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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 102/1992

NEW DELHI, THIS 31st DAY OF JANUARY, 1994.

SHRI C.J. ROY, HON'BLE MEMBER(J)
SHRI P.T. THIRUVENGADAM, HON'BLE MEMBER(A)

Shri C.R. Gautam
s/o late Shri Ram Dass
688, Bhabha Khadak Singh Marg
New Delhi

.. Applicant

By Shri G.D. Gupta, Advocate

VERSUS

Union of India, through

1. The Secretary
Ministry of Finance, North Block,
New Delhi
2. Chairman
Central Board of Direct Taxes
North Block, New Delhi
3. Chief Commissioner of Income-Tax(Admn.)
Central Revenue Building, New Delhi
4. Shri T.N. Chopra
Commissioner of Income Tax, IX Charge
Central Revenue Building, New Delhi
5. Shri Ashok Kakkar
Deputy Commissioner of Income Tax, Range 14
Central Revenue Building, New Delhi .. Respondents

By Shri R.S. Aggarwal, Advocate

ORDER

BY SHRI C.J. ROY, HON'BLE MEMBER(J)

This application is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the memo dated 21.8.91 communicating adverse remarks from his CR for the year 1990-91 by the Respondent No.5.

2. According to the applicant, he was recruited as Clerk in the year 1964 and is presently holding the post of Income Tax Officer (Group B) since 4.2.1982 and he has never been communicated any adverse remarks throughout his service spanning over 28 years, except in the year 1990-91, when he

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came to be posted under the charge of Respondent No.4 & 5 till the end of June, 1991, when the following adverse remarks made in his ACR were communicated to him:

Col.3: Fitness for promotion: NOT YET FIT

Col.4: General assessment: THE OVERALL OUTPUT OF THE
WORK IS UNSATISFACTORY

3. The applicant states that the Deptt. of Personnel & Training had deleted the column relating to "fitness for promotion" in the CR form vide its OM dated 16.5.85; further he was not informed of his deficiencies at any time during 1990-91 either by the Reporting Officer or the Reviewing Officer and given the necessary guidance on the alleged shortcomings in his work which has led to this adverse entry in the CR.

4. In the counter affidavit, the respondents have stated that the adverse remark to the effect that the officer was not yet fit for promotion is to be considered as part of his general assessment. They say the applicant was informed of his deficiencies and shortcomings during the year 1990-91. The Deputy Commissioner who is the Reporting Officer held monthly meetings of Assessing Officers of his Range, during which shortfalls in the performance of the applicant were fully pointed out to him. A DO letter dated 20.2.91 pointing out the shortfalls vis-a-vis action plan targets was also written to him (Annexure B) followed by a number of letters (collectively marked as Annexure R-1). Apart from the above said letters, the respondent No.4 also expressed his displeasure on his unsatisfactory performance in achieving the action plan targets vide letter dated 28.1.91 (Annexure

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R-2). The adverse remarks have been made on the basis of the records maintained and material available with the reporting/reviewing officer after giving ample opportunities to the applicant to improve his work. The applicant joined as ITO Ward 14 (3) on 2.5.90 and he has been continuously posted in the charge thereafter till his transfer from this charge in June, 1991. Thus he worked for a period of 11 months and not 9-1/2 months as alleged by the applicant. There is no discrimination against him while evaluating his work on grounds of his being a Scheduled Caste officer. His work has been judged on the basis of his performance and not on the basis of his caste.

5. The applicant has filed a rejoinder reiterating the same points as stated in his OA. Besides, he has urged that even on the basis of his performance while specially comparing to others, his output can not be said to be such as warranting communication of any adverse entry. The malafides would be clear from the fact that though it is admitted by the respondents that the column fitness for promotion has been deleted from the ACR from the Deptt. of Personnel, yet the respondents have statged that "however the remarks that the officer was not yet fit for promotion are to be considered as part of general assessment. The reason for deleting the said column by the Department of Personnel obviously and evidently was that the fitness for promotion was the function of the DPC and not of the Reporting/Reviewing Officer. The reply of the respondents is misleading inasmuch as no reference has been made to the non-working month of August during which his assessees were in curfew-bound area on account of "Mandal Commission Report" and notices etc. could not be served

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upon them. None of the officers in general could achieve the target set out by the Central Board of Direct Taxes as they were very much on the other side and therefore, he could not be singled out.

6. We have heard the learned counsel for the parties and perused the documents and records including the ACR dossier of the applicant. The short issue for consideration in this case is whether the adverse entry is based on his performance or there is discrimination.

7. It is a matter of fact that the applicant had not been considered adversely at any point of time in his service, except for the year 1990-91. His ACR for 1991-92 has also been good. The comparative performance chart of the officers working under the same Reporting Officer in Range 14 during the year 1990-91 is as reproduced below:

Name of the work done	14(1)	14(2)	14(3)	14(4)	14(5)	14(6)	14(7)	14(8)	14(9)
Processing u/s 143(1)(a)	3363	4664	4352	2258	4025	2735	1243	3954	1250
Scrutiny u/s 143(3)	109	130	100	131	132	132	90	120	161
Rectification u/s 154	296	289	242	155	300	188	120	112	-
Processing u/s 16(1)(a)	290	294	404	226	747	210	167	376	224
GTA u/s 15(1)1	18	9	14	8	32	4	-	20	10
AT Arrears in (000)	226	176	2357	12	200	39	4	-	19

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8. The ACR is generally written based on the total output/performance of a person. Though the applicant has worked in Ward 14(3) for a period of 9-1/2 months during the Reporting year 1990-91 (excluding the month of August during which the area under his jurisdiction remained under curfew due to the agitation against the implementation of the Mandal Commission's recommendation) and his average output/performance in spite of being better as compared to others, he has been assessed adversely by the same Reporting Officer thus depriving him the next promotional post as a result of which, his juniors have superseded him and have been promoted as Assistant Commissioners of Income Tax.

8. Department of Personnel's OM dated 16.5.85 reads as follows:

As the Ministry of Finance etc., are already aware there is no column relating to 'fitness for promotion' in the Model Form of CR for officers of the level of Section Officer and above and upto the level of Director circulated with the aforesaid OM of DOP & AR dated 4.3.78, Ministry of Finance etc. are requested further to take note of the decision of the Government and take action to delete the column relating to the fitness for promotion in the form of CRs for various services and posts under their control.

9. In pursuance of the above said instructions, the respondents were expected to delete this column which they failed to do so. In any case, this has no longer any validity in the eyes of law.

10. Besides, the applicant's work during the period of his additional charge has been reported to be satisfactory by way of DO letters dated 8.10.90, 6.2.91 and 7.2.91, but these were not considered by the Respondents. They have not considered the period of curfew, during the period of reporting, due to which the applicant has worked for less

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than one year. His performance chart for that period compared to others as per the statement given supra assumes a different connotation if this factor is considered and it has been rightly contended that others with less impressive records have not been given adverse remarks.

11. In the circumstances, as above, we direct that (i) the adverse remark against the column "fitness for promotion: NOT YET FIT" should be deleted, (ii) the second adverse remark "Overall output of the work is unsatisfactory" should be expunged, and (iii) consequential benefits, by constituting a review DPC, as required, should be made available expeditiously. This exercise shall be completed within a period of three months from the date of receipt of this order by the respondents.

This application is disposed of as above. No costs.

P. J. Thiruvengadam

(P.T. Thiruvengadam)
Member(A)

31/1/94
(C.J. Roy)
Member (J)

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