

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1443 of 1993

New Delhi, dated this the 22nd September 1998

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

Shri D.K. Sandila,
Tax Recovery Officer,
Range 16,
C.R. Building,
New Delhi.

..... APPLICANT

(By Advocate: Shri G.D.Gupta with
Shri M.L.Ohri)

Versus

1. Union of India through
the Secretary,
Ministry of Finance,
North Block,
New Delhi.

2. Chief Commissioner (Admn.),
Income Tax,
C.R. Building,
New Delhi.

..... RESPONDENTS

(By Advocate : Shri V.P. Uppal)
JUDGMENT

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

Applicant impugns respondents' order dated 13.1.93 (Ann. A-2) rejecting his representation dated 30.3.92 (Ann. A-1) and seeks a direction to respondents to cause his ACRs for the year 1987-88, 1988-89; and 1989-90 to be written and reviewed by those officers who had overseen his work for the major part of those years, or alternatively to exclude from consideration the existing ACRs for purpose of his promotion and to review his case for promotion as Asst. Commissioner with reference to 1991 DPC after excluding from consideration the afore-mentioned 3 ACRs and by considering in lieu thereof the ACRs for the period 1982-83, 1983-84 and 1984-85.

2. His case is that in his 22 years of service in the Income Tax Dept. upto 1985 he had a sportless and meritorious record. In 1985 some elements hostile to him made a false complaint against him to CBI as a result of which his house was raided on 4.10.85 but nothing incriminating was found and his case was closed. However, on learning from the CBI raid, respondents suspended him w.e.f. 8.10.85, which was eventually quashed by the Tribunal in O.A. No. 50/87 filed by him. Meanwhile a DPC was held in 1988 to consider cases of officers for purposes of efficiency bar, but his case was kept in sealed cover, against which applicant filed O.A. No.2164/91, whereupon respondents allowed him to cross efficiency bar. Meanwhile he received Memo dated 19.5.89 that during his tenure at I.T.O. Survey Ward I(2) from July, 1983 to June, 1985 he had completed two assessments in an irregular manner. Applicant states he submitted a detailed explanation refuting the allegations. Around that time the then Commissioner of Income Tax wrote to the Chief Commissioner of Income Tax recommending dropping of the case against the applicant. Thereafter nothing was heard from the authorities and applicant states that he presumed that his explanation had been accepted and the case closed against him. However, in January, 1993 he was

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served with the Article of Charges on the same grounds against which he filed O.A. No. 247/93 which is still awaiting adjudication.

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3. Meanwhile a DPC was held in December, 1991 for selecting ITOs for promotion as Asst. Commissioner. Applicant contends that he was shocked to find that he had been superceded by as many as 55 officers despite his consistently outstanding long good record. He apprehends that during this period the minds of his superior officers were prejudiced by the factum of the CBI raid, his suspension and the Memo of allegations against him as a result of which they may have given him luke warm reports leading to lowering of his comparative merit. He asserts that upto 1985 he had received outstanding ACRs and is also confident that for the years 1991, 1992 and 1993 he received 'Outstanding' or 'Very Good' ACRs. He states that being aggrieved by his supercession he challenged the same vide representation dated 30.3.92 (Ann. A-1) which was rejected by the impugned order dated 13.1.93 which was bald and cryptic and gave no reason for its rejection. He contends that he has reliable information that his ACRs for the years 1987, 1988 and 1989 were written by officers not competent to write them in terms of DP&T's Memo dated 22.5.75 and dated 23.9.85 (Page 7 to 9 of the O.A.).

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4. Thus for the year 1987-88 applicant states that he worked for about 8 months as PRO under the Chief PRO, Shri D.B. Rao and then Chief Commissioner (Admn.) Shri S.C. Bahl and for about 4 months he worked as OSD (Audit) under Shri P.K. Sinha, DDIT and the reviewing officer Shri V.K. Sachdeva D.I.T. He avers that his ACRs should normally have been initiated by Shri D.R. Rao and reviewed by Shri S.C. Bahl, but according to his information his ACRs were initiated by Shri P.K. Sinha and reviewed by Shri A.N. Mishra under whom he had worked for only one month 10 days, without even obtaining the views of Shri D.B. Rao or Shri Bahl.

5. Similarly for the year 1988-89 applicant asserts that he was posted in the office of Director, I.T (Audit) and was assigned the work of preparation of various checklists. He worked under Shri P.K. Sinha (1.4.88 to 20.12.88); Mrs. V. Suri (21.12.88 to 29.12.88) and Shri M.P. Varshney (30.12.88 to 31.3.89); all DDITs (Audit) who were the competent reporting officers; and S/Shri A.N. Mishra (1.4.88 to 22.12.88) and P.N. Mittal (26.12.88 to 31.3.89) as reviewing officers, but instead of his ACRs being initiated by Shri P.N. Sinha, it was initiated by Shri Varshney under whom he had worked for three months

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without consulting Shri P.N. Sinha and it was reviewed by Shri P.N. Mittal without consulting Shri A.N. Mishra.

6. Similarly for the year 1989-90 he asserts that he worked under different Reporting Officers and Reviewing Officers and also remained on leave for different spells, but according to his information the ACR for the whole of 1989-90 was initiated by one Shri D.C. Aggarwal, Sr. Departmental Representative (Admn.) who held that post for only two months and 20 days during which applicant remained on leave for 68 days. Applicant states that he served for the major part of 1989-90 under Shri P. Gangal or Smt. Rama Rani, but Shri Aggarwal never obtained their views on his performance and while those remarks were reviewed by the competent reviewing authority namely Shri V.K. Sachdeva, CCIT (Tech.), his review was based on Shri Aggarwal's remarks under whom applicant never worked.

7. Thus applicant contends that his ACRs for 1987-88 and 1988-89 were written and reviewed by officers who had overseen his work for three months and four months respectively, ^{and} were not written and reviewed by officers who had supervised his work for a major part of the said years, while for 1989-90 his ACR was written by an

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officer who had never overseen his work, and was not got written and reviewed by officers who had physically overseen his work for over 8 months.

8. Respondents in their reply challenge the O.A. With respect to the charge memo dated 19.5.89 they aver that it was noticed by the competent authority that applicant had completed assessment in some cases without proper scrutiny and after examination of the explanation submitted by applicant it was found that he had caused loss of revenue by his reckless act and gross negligence. The Disciplinary Authority then concluded that it was a fit case for initiating major penalty proceedings against applicant and accordingly a charge sheet was issued to him on 30.12.92.

9. Regarding the December, 1991 DPC, respondents state that promotion of ITOs to the grade of Asst. Commissioner of Income Tax (Jr. Scale) for 125 vacancies pertaining to the year 1991-92 were considered. 259 officers (including 4 ST officers) came within the zone of consideration in which applicant was at Sl. No.166. He was assessed as 'Good'. As per DP&T's guidelines dated 10.3.89 (Ann. I) the DPC recommended a panel of 125 officers who were assessed as Very Good and recommended to be placed

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enbloc below officers assessed as outstanding. Only 5 SC officers and 1 ST officer assessed as 'Good' were empanelled. All the 5 SC officers were senior to applicant.

10. As regards 1987-88 ACRs respondents state that applicant admittedly worked as PRO, Delhi from 3.4.87 to 2.11.87 and as OSD (Audit) from 13.11.87 to 31.3.88. The ACR was correctly initialed by Shri P.K. Sinha the then DDIT (Audit) in whose charge applicant worked from 13.11.87 to 31.3.88 and was reviewed by Shri A.N. Mishra the then Director Income Tax (Audit) who has recorded the duration of his supervision in the ACR.

11. Similarly for 1988-89 respondents state that applicant worked in office of DIT (Audit). The report was initialed by Shri M.P. Varshney and reviewed by Shri P.N. Mittal. Applicant had himself agreed that he worked under Shri P.K. Sinha DDIT from 1.4.88 to 20.12.88 and under Shri Varshney from 30.12.88 to 31.3.89. The reviewing officer was Shri A.N. Mishra upto 22.12.88 and thereafter Shri P.N. Mittal and the ACR was therefore correctly written by Shri M.P. Varshney and reviewed by Shri P.N. Mittal.

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12. As regards the 1989-90 ACRs respondents state that admittedly Shri D.C. Aggarwal, Sr. D.R. had the longest tenure during 1989-90 as applicant's immediate superior. Hence he was competent to initial the ACR. Even assuming that Shri Aggarwal was not competent to initial the ACR, it would have been initiated by the Reviewing Officer i.e. Shri V.K. Sachdeva the then CCIT (Tech.) who has in fact reviewed applicant's ACR and graded him only as 'Average' while applicant was grade as 'Good' by Shri Aggarwal. Thus the initiation of applicant's ACR by Shri Aggarwal was if anything favourable to him.

13. Respondents therefore assert that the ACRs for 1987-88, 1988-89 and 1989-90 discussed above are valid and have been written and reviewed by competent officers. They also state that they have no reason to believe that the DPC (which was held in UPSC) considered only four years ACRs and not five years ACRs as alleged by applicant. They further state that applicant's case was again considered by DPC in June, 1993 and its recommendations have been kept in sealed cover as vigilance clearance was withheld in his case.

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Even if he did not consult Shri D.B. Rao under whom applicant worked from 2.4.87 to 12.11.87 that does not invalidate Shri P.K. Sinha's remarks. in terms of DP&AR's Memo dated 22.5.75 referred to above. It is true that for the relevant period, as far as possible ACRs should be submitted for the DPC's consideration ^{but} ~~but~~ if in respect of a particular year for which ACRs are required to be written the ACRs are not available or are found to be invalid in respect of a part of the year, the DPC is not precluded from basing its assessment on the ACRs which are available and/or are valid for the remaining part of that year, subject of course to contents of DP&T's Memo dated 22.5.75 noticed above. Regarding ~~reviewing~~ ^{receiving} officer Shri A.N.Mishra's remarks Respondents do not deny that applicant worked under him for only one month 12 days, but have pointed out that he has recorded the duration of his supervision in the ACR, and We have no reason to hold that this the DPC held in the UPSC (which is an expert constitutional authority) were unaware of this fact when it assessed applicant's performance for that year.

17. Coming to the year 1988-89 the same reasoning as contained in Para 16 above, applies mutatis mutandis to the remarks for 1988-89 also. Applicant worked under Shri M.P.Varshney from 30.12.88 to 31.3.89 which covers the three months period contemplated in DP&T's O.M. dated 22.5.75

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14. We have heard applicant's counsel Shri G.D.Gupta and respondents' counsel Shri Uppal. We have also perused the materials on record and given the matter our careful consideration.

15. DP&AR's Memo dated 22.5.75 extracted in Para 15 of the O.A. provide that the reporting, reviewing and endorsing officers should have been acquainted with the work of the official reported upon for atleast 3 months during the period covered by the Confidential Report, and where the reviewing is not sufficiently familiar with the work of the officer concerned, it should be his responsibility to verify the correctness of the remarks of the reporting officer after making such inquiries as he considers necessary and should also give hearing to the person reported upon before recording his remarks. This implies that the officer reported upon should have worked under the reporting/reviewing/endorsing officer for a minimum period of three months in a year for them to familiarise themselves with his work to enable thme to comment on his performance during that year. Similarly DP&AR's Memo dated 23.9.85 lays down the procedure to be followed when there is a change in the reporting officer.

16. Coming to the 1987-88 ACRs admittedly applicant worked undr Shri P.K. Sinha from 13.11.87 to 31.3.88 which exceeds three months.

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and even if Shri Varshney did not consult his predecessors, his remarks cannot be held invalid. Similarly the remarks recorded by the reviewing officer Shri P.N. Mittal under whom applicant worked from 22.12.88 to 31.3.89 cannot be said to be invalid.

18. Coming to the year 1989-90 there is merit in respondents' contention that even if it were assumed that Shri Aggarwal was not competent to initial applicant's ACR, and for that reason his remarks were to be invalidated the DPC could not be precluded from basing its assessment on the remarks of for that year which were available and valid namely the remarks of the reviewing officer Shri Sachdeva which were even less favourable to applicant. Incidentally we see no reason to hold that the reviewing officer (Shri Sachdeva) based his remarks on those of the reporting officer (Shri D.N. Aggarwal) as contended by applicant because while Shri Aggarwal has graded applicant as 'Good', Shri Sachdeva has disagreed and has graded him only as 'average'.

19. Under the circumstances we are unable to hold that applicant's ACRs ~~made available to the 1991 DPC~~ ^{made available to the 1991 DPC} made available to the 1991 DPC for the years 1987-88, 1988-89 and 1989-90 were so vitiated as to require quashing of ~~the~~ ^{the 1991 DPC's} assessment, and ~~to~~ ^{to} direct ~~the~~ ^{the} respondents to review his case, after

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excluding the aforementioned ACRs from consideration and by considering in lieu thereof ACRs for 3 other years.

20. There are also no materials for us to hold that the DPC held in UPSC departed from DP&T's O.M. dated 10.3.899 and considered only four years' ACRs and not five years' ACRs as alleged by applicant.

21. During hearing applicant's counsel also sought to draw support from the Hon'ble Supreme Court's ruling in U.P. Jal Nigam Ltd. & Anr. Vs. P.C. Jain & Ors. JT 1996 (1) SC 641 on the point that before downgrading applicant's ACRs reasons for doing so should have been recorded in his personal file and he should have been advised of the charges. That judgment might have been relevant in a case where the challenge specifically was to the recording of adverse ACRs, but that is not the challenge before us in the present O.A. Unless annual confidential remarks are specifically modified or expunged in full or in part, for any valid reason, the DPC cannot be precluded from taking it into consideration when forming their overall assessment of the officer's performance for the relevant period. Furthermore, that judgment was delivered in the specific context of the U.P. Jal Nigam Rules regulating the communication of adverse entries in ACRs, which manifestly does not cover the present applicant's case.

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22. In the result the O.A. warrants no interference. It is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige

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

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