

Disposal App. No. 332/01105/2020
In
O.A. No. 332/0196/2015
(K.M. Dixit Vs. U.O.I. & Ors)

24.
23.11.2020

Hon'ble Mrs Manjula Das, Member (J)
Hon'ble Mr A Mukhopadhyaya, Member (A)

Applicant : Sri O.P. Srivastava, Sr. Adv.
Ms. Preeti Kashyap

Respondent : Shatruhan Lal
For res. Nos. 1, 2 & 3

For the reasons to be recorded separately,
O.A. stands disposed of. No order as to costs.

Member (A)

Member (J)

PB

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
(Through Video Conferencing)

Disposal App. No. 332/01105/2020 in
Original Application No.332/00196/2015

Date of Decision: 23.11.2020



Krishna Mohan Dixit	PETITIONER(S)/APPLICANT(S)
Sri O.P. Srivastava, Sr. Adv. And Ms. Preeti Kashyap	ADVOCATE(S) FOR THE PETITIONER(S)/APPLICANT(S)

-Versus-

Union of India & Others	RESPONDENT(S)
Shatruhan Lal For res. Nos. 1, 2 & 4	ADVOCATE(S) FOR THE RESPONDENT (S)

CORAM:

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. A. MUKHOPADHAYA, MEMBER (A)

1 Whether reporters of local newspapers may be allowed to see the Judgment?	Yes/No
2 Whether to be referred to the Reporter or not?	Yes/No
3 Whether the Judgment is to be circulated to other Benches of the Tribunal?	Yes/No

Judgment pronounced by

Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW
(HEARING THROUGH VIDEO CONFERENCING)**

SI. No. 2

**Disposal App. 332/01105/2020 in
O.A. No. 332/00196/2015**

Dated: 24.11.2020

**HON'BLE SMT. MANULA DAS, MEMBER (J)
HON'BLE MR. A. MUKHOPADHAYA, MEMBER (A)**

Krishna Mohan Dixit
Aged about 50 years
Son of Late Ayodhya Prasad Dixit
Resident of 3/172, Vishal Khand
Gomti Nagar, Lucknow.

... Applicant

By Advocates: Sri O.P. Srivastava, Sr Advocate
And Ms. Preeti Kashyap

-Versus-

AP

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

2. The Chairman,
Central Board of Direct Taxes
North Block, New Delhi-110001.
3. The Secretary, Union Public Service Commission
Dhalpur House, Shahjahan Road
New Delhi-110001.
4. The Secretary to the Govt. of India
Ministry of Personnel
Public Grievance & Pensions
Department of Personnel & Training
Government of India, North Block
New Delhi-110001.

..... Respondents

By Advocates: Shri Shatruhan Lal for res. Nos. 1,2&4
None for res. No. 3

ORDER (ORAL)

MANJULA DAS, MEMBER (J)



In the present case, applicant is seeking
the following relief:-

"6.(a) issue an appropriate order of direction
commanding the respondents to treat the

applicant as having been promoted w.e.f. Panel Year 2008 by issuing appropriate orders and by treating the upgrading order dated 04.11.2010 as final and by reading down the Office Memorandum's dated 12-06-2014, 22-05-2014 and 09-05-2014 and to accord all consequential benefits such as arrears of salary and other perks which may be paid to the applicant by the respondent within such time as may be stipulated by this Hon'ble Court; and to consider the Applicant for promotion on the post of Principal Commissioner of Income Tax, treating him to have been promoted as commissioner in the Panel Year 2008-2009.

(b) issue any other appropriate order or direction which the Hon'ble Tribunal may deem just and necessary in the circumstances of the case;

(c) to allow the application with exemplary costs."

2. Brief facts as narrated in the O.A. are that –
the applicant herein, an Indian Revenue Service (IRS in short) Officer of 1989 batch, presently Commissioner of Income Tax (ACIT), is aggrieved that the Review Departmental Promotion

[Signature]

Committee held on 27th & 28th December 2010 for recommending promotion of officers of ACIT grade to the grade of Commissioner of Income Tax for the vacancies of the year 2008-09 has ignored the upgraded ACRs of 'Very Good' from 'Good' for 02 years (2003-04 and 2004-05) in his ACRs , whereas the prescribed bench mark for promotion was 'Very Good' for the five years for which the ACRs of the officers were considered by the DPC held on 23.01.2009. The applicant in the present case prays for a direction upon the respondents to treat him as having been promoted w.e.f. Panel Year 2008 (w.e.f. 11.07.2009) on which date the applicant's batch was promoted. A DPC meeting for promotion to the post of Commissioner of Income Tax (CIT) in CBDT, Department of Revenue was held on

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23.01.2009 for a total 71 vacancies for the vacancy year 2008-09. The normal reckonable ACRs for 05 preceding years were of the years 2002-2003 to 2006-07. As per DOP&T's OM dated 08.02.2002, the benchmark in this case was 'Very Good' and in accordance with DOP&T's OM dated 18.02.2008, an officer was required to meet the benchmark 'Very Good' in all the five ACRs for promotion. The name of the applicant was considered by the DPC at S. No. 96. However, he was assessed 'Unfit' as his ACR gradings for the periods of 2003-04 and 2004-05 were below the benchmark grading 'Good'. Being aggrieved by this, the applicant had approached the CAT, Principal Bench vide O.A. No. 586/2009 with the following prayers:-

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"8.(c) To quash and set aside the minutes of the DPC held on 23.01.2009 to prepare a panel of CITs for the year 2008-09.

.....
(e) To direct the Respondents to consider the applicant for promotion to the post of Commissioner Income Tax, for the vacancy/panel year 2008-09 by holding a review DPC, ignoring the uncommunicated 'Good' entry recorded in his ACR and thereafter grant all consequential relief."

3. After hearing the learned counsel on both sides, the Central Administrative Tribunal, Principal Bench, vide its judgment and order dated 21.08.2009, allowed the said O.A. and directed the respondents to hold a review DPC for considering the applicant for promotion to the post of CIT by ignoring the ACRs for the period 2003-04 and 2004-05 and considering the ACRs for the period preceding the year 2001-02. It was further directed that the DPC shall ignore any ACR before the year

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2001-02, which has any similarly un-communicated adverse entry, which is a grading below the prescribed benchmark. The review DPC was to be convened within four months of the receipt of a certified copy of the order. Being aggrieved with the decision of CAT, Principal Bench, New Delhi, the Union of India preferred a WP(C) No. 6013/2010 before the Delhi High Court along with a bunch of WP(C) Nos. 6039/2010, 6554/2010, 6696/2010 and 6723/2010. After hearing both parties, the Hon'ble Delhi High Court vide its common judgment and order dated 08.10.2010 disposed of all the WPCs including the case of the applicant by modifying the order of the Tribunal as follows:-



"The adverse ACRs which falls within the consideration zone i.e. in the relevant 5 years before the date of holding the DPC, if not communicated earlier but are below bench

mark would be communicated within a period of 4 weeks from today to the incumbent officer if not communicated so far."

4. In the light of above judgment dated 08.10.2010 passed by the Hon'ble Delhi High Court in the above WP(C)s and in terms of DOPT's OM dated 13.04.2010, the applicant submitted his representation to upgrade the final gradings in the ACRs for the period 2003-04 & 2004-05. After considering the representation submitted by the applicant, both the below benchmark ACRs were upgraded to "Very Good" by the competent authority vide order dated 04.11.2010 and consequently, a Review DPC was proposed for vacancy year of 2008-09. This Review Departmental Promotion Committee was held on 27th & 28th

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December, 2010 in the office of the Union Public Service Commission, New Delhi.

5. Sri O.P. Srivastava, Sr. counsel assisted by Ms. Preeti Kashyap, learned counsel appearing for the applicant, submitted that the present grievance of the applicant arose when the Review DPC held on 27th & 28th December, 2010 did not accept the upgraded ACR gradings of 'Very Good' which were awarded to him on 04.11.2010. According to the Sr. counsel, the Departmental Promotion Committee, (DPC, in short), in a most arbitrary manner, instead of acting on the basis of the material provided by the Competent Authority, refused to act upon the upgraded entries. Senior Counsel argued that the Review DPC was bound to act in accordance with the orders passed by the



Government and material supplied to it for the purpose of considering an incumbent for promotion alone and no other purposes. Since the order dated 04.11.2010 had been passed upgrading the entries of the applicant from "Good" to "Very Good", it was thus incumbent upon the Review DPC to approve and recommend the applicant for promotion to the post of Commissioner w.e.f. Panel Year 2008-09 and failure to have do so vitiates the entire proceedings of the DPC held on 27.12.2010.

6. Sr. counsel, emphatically argued that the DPC/Review DPC cannot sit as an Appellate Authority over the decision of the Competent Authority nor could it comment upon the correctness or otherwise of the orders passed by the Government. The DPC could not refuse to accept



the verdict of the Competent Authority for any reason whatsoever, much less on the ground that the order passed by the government is not a speaking order when it was held in 2010, because, even going by the Government's own orders, the power to carry out such reappraisal, even if held valid, was introduced in specific terms by the DOPT OM of 9/5/2014 and cannot be applied with retrospective effect. Thus, the applicant has been declared as 'unfit' arbitrarily without assigning any valid reason by the DPC. The Hon'ble Delhi High Court had held that review DPC shall be held based upon the reappraised ACRs. Therefore, it was not within the domain of the Review DPC in question to make an appraisal of the applicant officer on its own. The Review DPC was thus bound to act on the



basis of the upgraded ACRs forwarded to it and to take its decision based on the material supplied to it without altering, supplementing or supplanting it.

7. By filing a rejoinder to the counter reply filed by the respondent No. 3 i.e. UPSC, Sr. Counsel submitted that another similarly situated incumbent, namely Sri O.P. Meena, had assailed the decision of the Review DPC by preferring O.A. No. 79/2014 wherein this Tribunal, after considering the respondents' stand, passed an order dated 27.10.2014 in furtherance of which a Review DPC was again held on 25.05.2016 and Sri O.P. Meena had been recommended to be promoted retrospectively with the upgraded ACRs having been considered and accepted without any modification by the DPC. According to Sr. Counsel,

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the applicant is identically placed and is entitled to be promoted w.e.f. the date of his eligibility as has been done in the case of said Sri O.P. Meena. And similar orders are required to be passed in the present case.

8. On the other hand, Sri Shatruhan Lal, learned counsel appearing for respondent Nos. 1, 2 & 4, further to his counter reply submitted that the department has acted as per observations/ directions given by the Hon'ble Delhi High Court in the Writ Petitions filed by the Union of India and Ors. against the order dated 21.08.2009 in O.A. No. 586/2009 filed by the applicant before the CAT, Principal Bench. It was submitted that the review DPC which was held on 27th/28th December 2010 duly considered the name of the applicant along



with others but the applicant was found 'unfit' by the DPC. The post of Commissioner of Income Tax is filled up on Seniority Cum Selection basis, for which a DPC is held and the recommendation of the DPC are duly approved by the ACC. The applicant accordingly, was correctly considered and promoted in the year 2011-12.

9. Respondent No. 3, the UPSC, by filing counter reply, has stated that the applicant was recommended as 'fit' by the DPC for vacancy year 2011-12 on consideration of entries/gradings in the relevant ACRs of 05 years from 2005-06 to 2009-10 which were meeting the prescribed benchmark as per assessment made by the DPC. The mere reason that he was found eligible for promotion by the DPC for the vacancy year 2011-12 would not entitle him

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for retrospective promotion from 2008-09 for which the relevant ACRs of five years considered by DPC were from 2002-03 to 2006-07.

10. Respondent No. 3 further stated that according to the provisions contained in para 6.1.2. of the DOP&T O.M. dated 10.04.1989, the DPC enjoys full discretion to devise its own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs, because it has been noticed that sometimes the overall grading in a CR may be inconsistent with grading under various parameters or attributes. Learned counsel cited the case of UPSC Vs. Hirnyalal Dev & Ors. (1988) 2 SCC 242



where the Hon'ble Apex Court has held that - "How to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee". In this connection the case of Nutan Arvind Vs. UOI & Anr. (1996) SCC (2) 488 has been relied upon where the Hon'ble Apex Court has held that - "When a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this court cannot sit over the assessment made by the DPC as an Appellate Authority".

According to the learned counsel, the applicant has not made out any case for granting of any relief.

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11. We have heard Sri O.P. Srivastava, Sr. Counsel assisted by Ms. Preeti Kashyap, learned counsel for the applicant and Sri Shatruhan Lal, learned counsel for respondent Nos. 1, 2 & 4, and perused the pleadings, materials and decisions relied upon. The applicant in the present case is an Indian Revenue Service Officer of 1989 batch and presently posted as Commissioner of Income Tax at Lucknow.

12. The grievance of the applicant is that he was promoted as Commissioner of Income Tax vide order dated 12.01.2012 against the vacancy year 2010-11 on the recommendation of the DPC instead of the vacancy year 2008-09. Earlier, while a DPC was held on 23.01.2009 for recommendation of promotion of officers in the grade of Additional

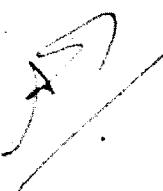


Commissioners to the grade of Commissioner of Income Tax for the vacancies of panel year 2008-09, the said DPC did not recommend the applicant on the basis of his ACR grading of 'Good' which was below benchmark for two years i.e. 2003-04 and 2004-05 in his ACR. The admitted facts are that the said ACRs for the period 2003-04 and 2004-05 graded as 'Good' were not communicated to the applicant and as the DPC found him 'unfit' for promotion, the aggrieved applicant had approached the CAT, Principal Bench vide O.A. No.

 586/2009. Said O.A. was allowed by the CAT, PB vide its' order dated 21st August 2009 which directed the respondent authorities therein to hold a Review DPC for considering the applicant for promotion to the post of CIT by ignoring the un-

communicated ACRs for the period of 2003-04 and 2004-05. It was also directed that DPC shall ignore any ACRs before the year of 2001-02, which had any similarly un-communicated adverse entry, which is a grading below the prescribed benchmark. It was further directed that the review DPC should be convened within four months of the receipt of a certified copy of the order.

13. Being aggrieved with the decision of the CAT, Principal Bench, along with other decisions on the same issue, the Union of India and Ors. had approached the Delhi High Court by preferring WP(C) No. 6013/2010 along with WP(C) Nos. 6039/2010, 6554/2010, 6696/2010 and 6723/2010 assailing the order dated 22.10.2009 in O.A. Nos. 2349/2009, 2377/2009, 2353/2009, order dated



16.02.2010 in O.A. No. 99/2010 and order dated 21.08.2009 in O.A. No. 586/2009. The Hon'ble Delhi High Court, after hearing the parties, perusal of the pleadings and decisions in the case of **Dev Dutt Vs. Union of India, 2008 (8) SCC 725** and **Abhijit Ghosh Dastidar Vs. Union of India and Ors. (SLP No. 26556/2004 decided on 22.10.2008)**, disposed of the said Writ Petitions vide its' judgment and order dated 08.10.2010. Operative portion of the judgment and order passed by the Hon'ble Delhi High Court on 08.10.2010 in the aforesaid Writ Petitions reads is being reproduced below:-


"In view of the aforesaid, we are of the considered view that the orders passed by the Tribunal in all these cases cannot be sustained. Thus the orders passed by the Tribunal would stand modified to the extent that the adverse ACRs which falls within the consideration zone i.e. in the relevant 5 years before the date of holding the DPC, if not communicated earlier but are below bench mark would be communicated within a period of 4

weeks from today to the incumbent officer if not communicated so far. The respondent would then be eligible to make a representation within 15 days thereof if not made already, and that such representation would be decided by the competent authority, which, of course, would be higher in rank to the authority who gave the adverse ACR within next 2 weeks irrespective of the fact whether the Reporting Officer or the Reviewing Officer of both are available or not, in case, the ACR is upgraded, making the incumbent eligible for consideration, review DPC would be held based upon the reappraised ACRs for the relevant period within six weeks. In case, the review DPC finds the incumbent fit for promotion, the benefit thereof would be given to him from the date when he was entitled for promotion to the next post had the ACR in question would not have been considered averse to him with all consequential benefits."

14. The applicant herein accordingly made his representation dated 17.09.2010 for upgradation of his ACRs for the period from 2003-04 and 2004-05 as per provisions contained in DOP&T's OM dated 13.04.2010. In pursuance of the order passed by the CAT, Principal Bench as modified by the Delhi High Court, the competent authority, i.e. Ministry of



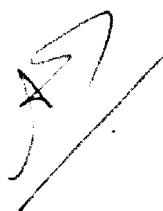
Finance, Department of Revenue, Central Board of Direct Taxes, vide it's order dated 04.11.2010, disposed of the representation of the applicant dated 17.09.2010 by deciding to upgrade the final gradings of 'Good' against the column related to Knowledge of Accounts and procedures for 2004-05 and also upgraded the final gradings from 'Good' to 'Very Good' in the ACRs for the F.Y. 2003-04 & 2004-05 of the applicant. The applicant was promoted to the post of Commissioner of Income Tax in the regular panel of 2011-12 and as no retrospective promotion was given against panel year 2008-09, the applicant made a representation to the Chairman, Central Board of Direct Taxes, New Delhi on 06.03.2012 with a request to restore his seniority along with panel year 2008-09 in as much



as the competent authority i.e. Central Board of Direct Taxes had upgraded his below bench mark ACR to "Very Good" vide its' order dated 04.11.2010. Thereafter, a series of representations were made by the applicant to the respondent authorities for 'convening a Review DPC for the panel year 2008-09 and to restore his seniority. In these representations, the applicant also stated that subsequent DPC which was held on 26.12.2010 did not recommend his name for promotion to SAG grade on the ground that upgradation order was not a speaking one.

15. A review DPC for selection of officers for promotion to the post of Commissioner of Income Tax in the Central Board of Direct Taxes, Department of Revenue was held for reviewing the

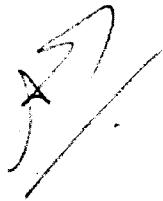
DPC held on 23.01.2009 against 71 vacancies for the year 2008-09. The case of the applicant was also placed before the Review DPC as the earlier DPC which met on 23.01.2009 did not recommend the promotion of the applicant to the post of Commissioner of Income Tax along with other 07 officers who did not achieve the prescribed benchmark grading. The review committee reexamined the ACRs of all the officers including the applicant and did not recommend him for promotion to the post of Commissioner of Income Tax as he was not found fit. Observations given by the review committee reads as follows:-



"The justification given in the speaking orders as well as in the office records for upgrading the ACR (s) in respect of S/Shri N.N. Thakur (2004-05), Waseem Arshad (2005-06), O.P. Meena (2003-04) and K.M. Dixit (2003-04 and 2004-05) do not

commensurate with the attributes recorded in different columns of the relevant ACR (s) including general assessment nor any new acceptable fact has been brought out in their regard. The competent authority has not placed any proper justification in support of its decision warranting to upgrade the performance of these officers from 'Good' to 'Very Good'. The Committee therefore, took a conscious decision that the final grading i.e. 'Good' assigned by the original DPC (s) for the year (s) as indicated above against each of these officers in bracket does not merit up-gradation."

16. It is noted that a similarly situated officer namely Sri O.P. Meena, being aggrieved with the justification as given above, approached this Tribunal vide O.A. No. 79 of 2014 wherein, this Tribunal vide its order dated 27.10.2014 allowed the said O.A. and directed the respondents therein to hold a review DPC to consider the applicant (Sri O.P. Meena) for promotion to the post of Commissioner of Income Tax for the panel year



2008-09. It is not disputed either by the respondents in their counter reply or through rival submissions that in the review DPC held on 25.05.2016, the Committee recommended the said Sri O.P. Meena for promotion retrospectively by considering upgraded ACRs which have been accepted without any modification by the DPC.

17. The admitted fact is that the ACRs for the year 2003-04 and 2004-05 of the applicant were not communicated to the applicant and in view of **Dev Dutt (supra)** and **Abhijit Ghosh Dastidar (supra)**, the un-communicated ACRs ought to have been ignored by the DPC. However, in the present case, it is seen that same were not ignored. Although they were upgraded to the benchmark grading from 'Good' to 'Very Good' for the period of 2003-04



and 2004-05, the review DPC held on 27th/28th December 2010 ruled against the upgradation and instead gave a 'justification' that the upgraded ACRs of Sri N.N. Thakur (2004-05), Waseem Arshad (2005-06), O.P. Meena (2003-04) and applicant Sri K.M. Dixit (2003-04) were not commensurate with the attributes recorded in different columns of the relevant ACR (s) including general assessment and that no new acceptable fact had been brought out in this regard. A further observation was made by the Committee that the competent authority had not given any proper justification in support of its decision to upgrade the performance of these officers from 'Good' to 'Very Good'.

18. Though the committee is entitled to exercise its own discretion in a review DPC meeting such as

the one held on 27th & 28th December 2010, however, that discretion cannot be exercised arbitrarily and ought to be based on material on record. In this case, in our view, there is no substantive material on record as would justify that the applicant's case be decided as 'unfit' for promotion. In our view, the 'justifications' as given by the committee are not on the based on substantive reasons as the order of 4/11/2010 upgrading the applicant's ACR gradings *prima facie* appears to be a reasoned one. Accordingly, we deem it fit and proper to direct the competent authority to hold a further review DPC to review the decision of the DPC held on 23.01.2009 as well as review DPC held on 27th/28th December 2010 for promotion of Commissioner of Income Tax for the

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panel year of 2008-09 taking into consideration the respondents' own order of 4/112010. Ordered accordingly.

19. The aforesaid exercise shall be carried out by the competent authorities to hold a further review DPC within a period of three months' from the date of receipt of a copy of this order.
20. With the above observations and directions, O.A. stands disposed of. No order as to costs.

(A. MUKHOPADHAYA)
MEMBER (A)

(SMT. MANJULA DAS)
MEMBER (J)

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