

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~XXXXXX~~

208 of 1993.

DATE OF DECISION 17th January, 1994.

Shri Dinkerrai Joshi Petitioner

Shri M.R.Anand Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri R.P.Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B.Patel : Vice Chairman

The Hon'ble Mr. K.Ramamoorthy : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

1/1

: 2 :

Shri Dinkerrai Joshi,
son of Mulshanker Joshi,
Aayakar Bhawan, Ashram Road,
Ahmedabad - 9.

Resident of 21, Gandhi Park,
Ambawadi, Ahmedabad - 15.

...Applicant.

(Advocate : Mr.M.R.Mnand)

Versus

1. Union of India,
(Notice to be served through
Secretary,
Finance Department,
Secretariat,
North Block,
New Delhi).

2. The Commissioner of Income Tax,
Gujarat-3, Aayakar Bhavan,
Ashram Road,
Ahmedabad - 9.

...Respondents.

(Advocate : Mr.R.P.Bhatt)

JUDGMENT
O.A. NO. 208 OF 1993.

Dated : 17/01/1994.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The applicant has sought relief for quashing
the order of the Deputy Commissioner of Income Tax (Computer),
Ahmedabad, bearing No.DCIT (Computer)/Est./92-93, dated
22nd February, 1993. In this order the applicant had been
informed that since the Departmental Promotion Committee
had not recommended his name as A.C.I.T. for the available
number of vacancies, he was not considered fit for promotion.

: 3 :

2. The applicant has been working as Income Tax Officer to which post he had been promoted in the year 1973 and his turn had come up for promotion from Income Tax Officer Group-B to the post of Assistant Commissioner of Income Tax. He has in his career never been superceded or punished till now. However, even though he had come within the zone of consideration before the Departmental Promotion Committees in 1987, in the DPC meetings in the years 1987, 88-89 and 90, he had not made it into the promotion list. His main contention is that, two officers of Gujarat Charge, namely; Shri R.U.Jani and Shri N.L. Udani, who were junior to him and who had been left out earlier had made the grade for promotion. In his opinion, his comparative merit had not been looked at judiciously.

3. The applicant had earlier approached this Tribunal through O.A./55/92, objecting to the denial of promotion which had been caused by a wrongly adopted procedure of sealed cover by the then Departmental Promotion Committee. This Bench therefore, had vide its order dated 04.11.1992, issued directions that the applicant's case did not deserve to be put in the sealed cover since the enquiry was still being only contemplated at the time of the meetings of the Departmental Promotion Committee. The Tribunal had directed that sealed cover should be opened and the matter decided. It was revealed that in the sealed

: 4 :

cover, the officers' grading had been rated as "Good" and hence he had not found a place in the promotion list since "Outstanding", and "Very Good" officers, with better grading were available in sufficient number to fill up the available vacancies.

4. In the Original Application, the applicant had pointed out that in the case of the first promotion of grade-B officer to Assistant Commissioner of Income Tax, an officer could be "Good" or "Very Good". Only "Outstanding" candidates got an overriding priority and "Good" and "Very Good" officers were to be in one group. In the reply, the Department had contested this interpretation and had cited the order of the Government in this regard by way of Circular bearing No.22011/5/86-Estt.(D) dated 10.4.1989. As per this circular, the three levels of 'Outstanding', 'Very Good' and 'Good' had been maintained and each group will rank senior to one another according to the respective rank. The applicant at the argument stage accepted the position taken by the department and did not press this point.

5. The task before the Tribunal therefore, has got reduced to the one issue raised in the application as to whether there has been an error in assessing the comparative merits of the applicant and in giving him proper grading. This Tribunal is aware of the fact that Departmental Promotion Committee is a high-powered Committee with which U.P.S.C. is also associated and, therefore, the question

of going behind the recommendation of the D.P.C. should not normally arise. In this case however, the applicant has alleged that the impugned action is vitiated by ^{legal} ~~political~~ malafides. The respondents in their affidavit in reply of 18.8.1993, while denying this allegation, had offered to show the records to the Hon'ble Tribunal for perusal. The applicant, also in his rejoinder dated 2.9.1993, agreed to the condition of the papers being shown only to the Tribunal. It is in this context that the Tribunal has called for the papers and restricted itself to the perusal of the records in a general manner to see whether there was any reason for substantiating legal malafides, since no specific allegation was made of personal, vindictive or malafide reporting by respondents. The counsel for the respondents made available the C.Rs of the applicant and those of the other two officers mentioned in the application along with a comparative statement of their own ratings as ^{from} culled for the C.R. kepts with them.

6. The assessment of the three Departmental Promotion Committees were also made available to the Tribunal. As per this assessment report, the applicant, Shri Joshi's name first figured in the Departmental Promotion Committee held on 23rd to 27th November, 1987. His grading was shown as 'Good' therein and he did not find place in the final selection list. The next

Departmental Promotion Committee was held on 1st, 2nd, 5th & 7th December, 1988 and on 19th & 27th January, 1989. In this meeting also, Shri D.M.Joshi has been assessed as 'Good' while the next officer Shri Jani was considered as 'Very Good'. In the next Departmental Promotion Committee held on 22nd, 24th and 31st January, 1990 and 1st, 15th, 16th, 21st and 27th February, 1990 the name of Shri Joshi again appears with the grading 'Good' whereas Shri Udani was graded as 'Very Good' in this very Departmental Promotion Committee meeting.

7. The C.Rs were seen by the Tribunal only, to see independently for itself, the justification for the gradation as given by the D.P.C.

8. On a perusal of the C.Rs, particularly of the applicant, and keeping in view the procedures as envisaged in O.M.No.51/5/72-Ests. (A) para-4.1. to 4.6 the following picture emerged before the eyes of the Tribunal.

9. In the first meeting of the DPC which was held in 1987, obviously the C.Rs from the year 1982 to 1986 to 1987 were to be considered. However, the fact that in the DPC a sealed cover procedure had been resorted would indicate that by that time of the meeting itself, the authorities would have communicated to DPC remarks substantially as found in the C.R. of 1987-88 (to which

: 7 :

a reference will be made later). Taking the remarks in the C.R. as a whole against the various entries and for the whole period, the officer merits the grading 'Very Good' inspite of one 'Good' only C.R. of 1983-84.

10. In the DPC of November 1987 since only the case of Shri Joshi had come up, the Tribunal has no record to comparatively assess him vis-a-vis others. Therefore, on the subject of all India grading, no definite remarks can be passed by this Tribunal.

11. In the next DPC however, the report for 1987-88 would have become additionally available for the DPC. In the C.R. of 1987-88, against 'integrity' column, it had been specifically remarked :

"He is a man of very very suspected integrity. In fact the lapses noticed are grave, so grave that a showcause notice was issued to him on 8.9.1987. Issue of charge sheet for his compulsory retirement under section 56 J is contemplated. The decision regarding his compulsory retirement is likely to be taken in the next meeting of screening committee."

This recording itself is against standing instructions vide C.S.O.M.No.51/5/72-Ests.(A) dated 20th May, 1972, para-5, according to which the following actions should have been taken.

"(b) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicions regarding the officer's integrity should be recorded simultaneously and followed up."

Against the other columns, the Reviewing Officer has specifically recorded that the officer reported upon has been kept "away even from non-assessment work". Hence he was not assigned any work and no staff assistance was given to him and there was no material whereby a proper assessment could be made.

12. In that sense, the 1987-88 C.R. is only a proforma C.R. Resort will then have to be made to the earlier years' C.Rs as per instruction contained in a circular No.22011/5/86-Estt (D) dated 10.4.1989. In that light, therefore, applicant would have to be graded as 'Very Good' as stated earlier. In this Departmental Promotion Committee, Shri Jani has been given 'Very Good' grading who had adverse remarks earlier and in the totality of assessment, he does not deserve a grading very different from that of the applicant, except for the fact that for one year of 1984-85, the C.R. has shown him to be 'Outstanding'. On comparative merit the applicant has to be included in the 'Very Good' category, on the analogy of Shri Jani's case.

13. When the departmental promotion committee met again in 1990, the C.R. for 1988-89 had become available. C.R. of 1988 is available in two parts, one for the period 01.04.1988 to 10.11.1988 and the other for the remaining period. Here also, the first part of the C.R. is a proforma C.R. as stated earlier, but the other part C.R. clearly speaks highly of the officer as to enable him to get a 'Very Good' grading. In this particular DPC Shri Udani has found place on the basis of 'Very Good' ranking. Here also, a comparative analysis of the two C.Rs creates a *prima facie* impression for according similar grading.

14. The Tribunal is aware of the fact that the DPC is a high power committee consisting of a Member of the UPSC also. The Tribunal is also conscious that it has not had the benefit of seeing other C.Rs other than the three referred to above so that the total grading could be fully appreciated. However, the Tribunal cannot help coming to the conclusion that the recording in the body of the C.R. against the column 'integrity', in contravention of the prescribed procedure has tended to ~~the~~ tone down the overall grading by the DPC.

15. To sum up, on a short analysis of the assessment of the case in the three DPC proceedings of 1987, 88-89 and 1990, a 'prima facie' impression emerges that the C.R. grading of the applicant deserves re-consideration. In the first DPC there is no material with the Tribunal for judging comparative merit. In the second DPC, the applicant's case appears to be similar to that of Shri Jani, though Shri Jani has one 'outstanding' entry. In the third year prima facie, the case of Shri Udani appears to be at par with that of the applicant.

16. In the light of the above, it is not possible to brush aside the charge levelled by the applicant that an element of bias and injudiciousness has crept in in the matter of assessment of his performance and grading. On this ground, the case deserves to be referred back for review by the DPC. In the opinion of this Tribunal the case is one where a review by the DPC is called for within the meaning of Section-18 of the guidelines of the DPC as enumerated in circular dated 10.4.1989.

It is true that the nature of this case is not one falling specifically within Section (a), (b), (c) and (d) of Section 18.1, but the rule itself has mentioned that the instances were illustrative only and not exhaustive. In our view, there has been a factual mistake falling within the meaning of Section 18.3. and 18.4.1.

17. Thus, the petition succeeds, and the case is remanded to the respondent, for convening a Review DPC meeting to consider the case of the applicant, within a period of six weeks from the date of receipt of a copy of this judgment by the respondents. No order as to costs.

18. Before concluding, the Tribunal cannot help making a remark regarding one aspect of the procedures adopted. During the arguments, the counsel for the respondent stated that the assessment is based on the recorded C.Rs and conceded the possibility that in the system as adopted, the turn of 'Good' officers may not come up at all for promotion and could very well account for the fact of 'nearly 700 (junior) officers' getting promoted as stated in the Original Application (para-4.4). This is an aspect which in the opinion of the Tribunal needs a re-look. While the general principles of better merit getting precedence is

: 12 :

accepted, the question of linking seniority to 'Good' C.Rs needs to be considered so that 'Good' officers are not permanently relegated to oblivion. For example, an officer who has been enlisted in the DPC list on 'Good' category in three lists continuously, could be considered to rank with 'Very Good' officers of later years. This is thrown in, as a suggestion for consideration, particularly in view of the variability of the C.R. assessments by different reporting and reviewing officers on their own definition of 'Good', 'Very Good' and 'Outstanding'. Any amount of spelling out in O.Ms can not eliminate the subjective factor and hence the need to hedge it by seniority consideration.

19. Application stands disposed of in terms

of para-16 above.


(K.Ramamoorthy)
Member (A)
17.01.1994.


(N.B.Patel)
Vice Chairman
17.01.1994.

AIT

Date	Office Report	ORDER
12/4/94		<p>At the request of Mr. Anand adjourned to 29/4/1994.</p> <p><i>R</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p><i>Y</i></p> <p>(N.B. Patel) Vice Chairman</p>
29.4.94.		<p>a.a.b.</p> <p>Mr. Raval states that copy of the M.A. is furnished just now and he seeks time to obtain instructions from his client. Adjourned to 5.5.1994.</p> <p><i>R</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p><i>Y</i></p> <p>(N.B. Patel) Vice Chairman</p>
5/5/94		<p>ait.</p> <p>Heard the learned advocates. M.A. allowed. Time to comply with operative part of the judgment extended till 31.5.1994. No further extension will be given. M.A. stands disposed of. No order as to costs.</p> <p><i>R</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p><i>Y</i></p> <p>(N.B. Patel) Vice Chairman</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench

Application No. 04/208/93 of 19

Transfer Application No. _____ Old W.Pett No. _____

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 25/6/94

Countersigned :

Anil Patel
Section Officer/Court Officer 31-1-94

.....
Signature of the Dealing Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT NEW DELHI AHMEDABAD

INDEX SHEET

CAUSE TITLE..... 04/208/93 OF 198□.

NAMES OF THE PARTIES..... MR. Dinkar Lal Joshi

VERSUS
U. S. A. & B. S.

PART A B & C