

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

R.A. 7/2000

(O.A. 1171/96)

Present : Hon'ble Mr. Justice R.N. Ray, Vice-Chairman.

Hon'ble Mr. B.P. Singh, Administrative Member.

Sri B. Biswas alias Baroday Biswas

- v e r s u s -

1. Union of India, through the Secretary to the Govt. of India, Department of Revenue, North Block, New Delhi-110 001.
2. Secretary, UPSC, Dholpur House, New Delhi-110 001.
3. Chairman, Central Board of Direct Taxes, North Block, New Delhi-110 001.
4. Shri Mohan Singh, Commissioner of Income Tax, Ayakar Bhawan, Mumbai-400 020.

...Respondents.

For the applicant : Mr. N. Chakraborty, counsel.
Mr. R.K.C. Thakur, counsel.

For the respondents : Mr. B. Mukherjee, counsel.

Heard on 23.03.2001 & 27.03.2001

Order on 27.04.2001

O R D E R

B.P. Singh, AM

Shri Baroday Biswas, the applicant in O.A. No. 1171/96 has filed this R.A. against the order dated 17.02.2000 passed by the Division Bench of this Tribunal and prayed for the following reliefs:-

"(i) that the Review Application be allowed,
(ii) that prayer 8(a) in O.A. No. 1171/1996 be allowed as a consequence, the prayer 8(a) in the O.A. reads as under:-

" The applicant be declared promoted from the year 1990 DPC list for promotion to the post of CIT as per his position therein;

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(iii) any other order or orders as may be deemed fit may be passed.

The order dated 17.02.2000 was passed by the Division Bench of this Tribunal the presiding Judge of which has since retired. Therefore, another Bench consisting of the above members was constituted to hear the Review application and the case was accordingly heard on 23.03.2001 and 27.03.2001.

3. We have heard Sri N. Chakraborty, Id. counsel leading Sri R.K.C. Thakur, Id. counsel for the applicant and Sri B. Mukherjee, Id. counsel for the respondents. We have gone through the R.A. alongwith the various enclosures annexed therein. The Id. counsel for the respondents contested the application on the ground of limitation, on merit as well as official records. He has also produced the official records relating to D.P.C. for our perusal and we have perused the same.

4. The fact of the case is that the applicant was due for promotion to the post of CIT in the year 1990. He was considered by the DPC held on 20 & 21 September, 1990 alongwith other eligible officers. He was graded 'very good' by the DPC and included in the list at sl. No. 41. His name was not included in the panel as there were only 31 vacancies and the name of only 31 officers were included in the panel. The next DPC was held on 3rd and 4th June 1993. The DPC considered 22 officers as there were only 9 vacancies. The applicant was not ^{in the zone} of consideration according to the seniority list. The Id. counsel Sri Thakur for the applicant submitted that though the respondents submitted that there were only 31 vacancies and panel for the same was prepared by the DPC of 1990 but actually 52 officers were promoted between 24.12.91 to 20.11.92 as would be clear from the civil list of 1995 published by the Ministry of Finance, Deptt. of Revenue (respondent No.1) and produced before us. If there were 31 vacancies and only 31 officers were empanelled then how the promotions to 21 more officers including the

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officers junior to the applicant were given promotion upto ~~1990~~ and before the next DPC which was held on 3rd and 4th June '93. The Id. counsel for the applicant submitted that this fact was brought to the notice of the Hon'ble Tribunal at the time of hearing on January 20, 2000, but some how or the other this important piece of evidence did not attract the notice of the Hon'ble Tribunal in the judgment delivered on 17.02.2000. This is an error apparent on the face of the record and, therefore, the order dated 17.02.2000 requires to be reviewed by the Hon'ble CAT. The Id. counsel also submitted that records of 1990 DPC were produced before the Tribunal but the Id. counsel for the applicant was not given any opportunity to peruse the same. This was against the decision of the Hon'ble Calcutta High Court in Mrinal Kanti Das Barman Vs State of West Bengal (1976 C.L.J. page 571 paras 28 to 31) which provides that unless records are shown to the petitioner or his Advocate, the Court cannot see the records and pass judgment on their personal knowledge. There is thus further error apparent on the face of the records. The Id. counsel further submitted that 52 officers were promoted as CIT from 1990 DPC list but as per reply only 31 posts were ~~to be~~ filled. How the remaining 21 CITs were appointed is not explained in the reply by the respondents. The Hon'ble Tribunal also in paragraph 5 of this order mentioned applicant's position at sl. No. 41 as per respondents version but nothing has been stated about the number of vacancies filled up from the select list of 1990 DPC on the basis of the records produced before and perused by the Hon'ble Members of the Tribunal which is also a mistake or error apparent in the face of records. The applicant further submitted that the respondents reply contained an untrue statement to the effect that there were only 31 vacancies and the applicant could not be promoted because his position was 41. The Id. counsel further submitted that though the applicant has since been promoted vide order dated 13.05.99 (Annexure-4), he has suffered substantial loss of seniority because of the vagaries of the government records which he has no opportunity to inspect during the

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hearing. On the above grounds Id. counsel for the applicant submits that the judgment rendered contains error apparent on the face of the records and, therefore, the order requires to be reviewed and modified accordingly.

5. The Id. counsel Sri Mukherjee for the respondents contested the application on the ground of limitation. He further submitted that R.A. proceedings has been filed beyond the period of limitation and, therefore, the same is not maintainable. The Id. counsel further submitted that in the R.A. proceedings there is no question of condonation of delay according to the provisions of Rule 17 of the CAT (Procedure) Rules, 1987. The Id. counsel further submitted that the applicant was not empanelled for promotion by the DPC held in September 1990 though he was in the zone of the selection and considered by the DPC. In the said DPC his name appeared at the sl. No. 41 of the candidates who achieved the prescribed Bench mark viz. 'very good'. Since there were 31 vacancies only ~~the~~ first 31 candidates were to ~~be empanelled~~ ^{be empanelled 2/2} for promotion and the applicant could not come against the vacancies available at that time. The Id. counsel submitted the above position on the basis of the minutes of the DPC proceeding held on September 1990. He produced the same for our perusal also. On the basis of the above, Id. counsel submitted that no injustice has been done to the applicant. His case was considered according to the prescribed rules and procedures. Though he came within the zone of selection and also achieved the prescribed Bench mark but since his position among the candidates who achieved the prescribed Bench mark was much below to the number of vacancies available, therefore, his name could not be included in the panel. In other words, his name appeared at sl. No. 41 of the candidates who achieved the prescribed Bench Mark and since vacancies were 31 only, the first 31 candidates were taken for empanelment for promotion and the remaining were left out as no vacancy was available. On our specific query about the alleged averment of the Id. counsel for the applicant that 52 officers were promoted as CIT

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between 24th December '91 to 22nd January 1993 i.e. after the DPC dated September 1990 and before the DPC June 1993 as against 31 vacancies as submitted by the Id. counsel for the respondents. He was not in a position to give a categorical reply to this point and tried to convince us regarding the number of vacancies and number of appointments. However, he produced the official documents relating to the DPC for our perusal.

6. The Id. counsel for the applicant submitted very vehemently that the plea of limitation is not applicable and the principles of res judicata is applicable. He stated/cited the following cases in support of his above contention.

- (1) AIR 1960 SC 941 para 7 and 8 - Satyadhyani Vs. Smt. Deorajin Debi and Anr.
- (2) AIR 1928 Calcutta 777 Full Bench - Tarini Charan Bhattacharjee and Others Vs Kedar Nath Haldar, page 781 and 782.
- (3) AIR 1960 Orissa 197 & 199 Full Bench and Paras 19, 20, 23 and 26 - J. Ramanuj Raj Deb Vs. Lakshmi Narayan Tripathy and Ors.
- (4) 1994(4) SCC 53 para 10, 11 and 30 P.K. Vijayan Vs. Kamalakshmi Amma and Others.
- (5) 1994(2) SCC 14 Sulochana Amma Vs. Narayan Nair, para 5 at page 17.
- (6) AIR 1979 SC 1144, The Madras Port Trust Vs. Hymanshu International Para 2.

The Id. counsel, in addition to the above decisions of the various courts submitted that the copy of the order dated 17.02.2000 was delivered on 25.02.2000 and the R.A. was filed on 24.3.2000 thus the review application was filed within prescribed period of limitation of one month.

7. The Id. counsel confined his review petition to the DPC proceeding of September 1990 and panel prepared as a result of the DPC proceeding and actual promotion given to the officers in the panel or out of the panel. The Id. counsel has nothing to say about the subsequent DPCs and he does not appear to be aggrieved with them. He, therefore,

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alongwith other officers after sl. No. 31 of the list of the officers found eligible for promotion. In view of the above the Id. counsel submitted that the order dated 17.02.2001 should be modified accordingly and the applicant should be declared promoted from the DPC list of 1990 as per his position in the list.

8. From the above discussion, it is clear that entire matter in this review petition hinges on the submission that against the panel of 31 officers recommended by the DPC in September 1990, 52 officers were given promotion after the DPC of September 1990 and before the next DPC in June 1993. At the time of hearing of the O.A. No. 1171/96, it was submitted by the respondents that there were 31 vacancies for which DPC of September 1990 was held and first 31 officers who achieved the bench mark of 'very good' were empanelled for promotion. The name of the applicant appeared at sl. No. 41 of such officers who achieved the bench mark. The name of the applicant could not be included in the panel of 31 officers because he was below in the list and vacancies were not available. The Id. counsel for the applicant pointed out time and again in this review petition that if there were 31 vacancies and 31 persons were kept on panel and no next DPC was held before June '93 wherfrom 21 more officers were promoted as CIT against the panel of 31 officers only. Naturally, the list included the names of officers who were in the list of those officers who achieved the bench mark in the DPC of September 1990 and could not be included in the ^{panel} ~~bench~~ at that time because vacancies were shown 31 only. If other officers who were left out in the initial panel like the applicant were given promotion, the applicant was more deserving than many others as his position in the list of officers who achieved the bench mark was 41 and promotion was given to 52 officers. Apparently, this appears to be very convincing and reasonable statement of fact and arguments.

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9. We referred again to the minutes of the DPC convened on September 20 and 21, 1990. We have again gone into details of the proceedings as well as the copy of the civil list of 1995 enclosed with the R.A. From the perusal of the DPC list and the civil list, we have come across with the following facts:-

- i) The DPC was held for the vacancy of two financial years viz. 1989-90 and 1990-91,
- ii) The vacancies for financial year 1989-90 was shown as 14 and for 1990-91 was 30 total 44.
- iii) The committee was also informed that four officers were away on deputation/training and not available for posting till 31.3.1991. Accordingly it was decided to have extended panel by four candidates.
- iv) The committee considered the CR file of the seniormost eligible officers. The committee made separate assessment for the vacancies of 1989-90 and 1990-91.
- v) For the vacancies of 1989-90, 41 officers were considered and for the vacancy of 1990-91, another 92 officers alongwith 28 not selected against the vacancy of 1989-90 were considered.
- vi) Against the vacancies for 1989-90 in all 13 officers were found to have achieved the bench mark of 'very good'. Against the vacancies of 1990-91, in all 52 officers achieved the bench mark of very good. Against the vacancy of 1989-90 a panel of 13 officers leaving one vacancy was prepared as 14 officers upto the bench mark was not available in the list.
- vii) The one vacancy of 1989-90 for which eligible officer was not available was transferred to the vacancy of 1990-91 and thus the total vacancy for 1990-91 was made $31 = (30+1)$.

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(viii) For the vacancies of 1990-91, 52 officers were found to have achieved the prescribed bench mark of 'very good'. The vacancy for this year was 31 and, therefore, first 31 officers were included in the panel. The name of the applicant appeared at sl. No. 41. Therefore, the panel could not reach upto that level i.e. upto the name of the applicant. The name of Sri S.K. Kundra appeared at sl. No. 31. The list should have ended here on the name of Sri Kundra. But since four officers who have achieved the prescribed bench mark were not readily available for promotion due to their deputation/training the name of four more officers at sl. Nos. 32, 33, 34 and 35 who achieved the bench mark of 'very good' was included in the panel.

(ix) Thus in all 13 officers were empanelled against the vacancies for 1989-90 and 35 officers against the vacancies for the year 1990-91 making total (13 +35) 48.

(x) From the perusal of the civil list it is clear that the names of the 48 officers from the panel prepared by the DPC of September 1990 starts appearing from Sl. No. 217 to 266 and not from 215 to 266 as submitted by the Id. counsel for the applicant of the R.A. From sl. No. 217 to 266, the name of 45 officers from the list of the panel finds place against the total number of 48 officers. The other seven officers whose names appeared at sl. Nos. 215, 216, 226, 231, 239, 243 and 248 do not find place in the panel of the DPC of September 1990. The names of

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seven officers, whose recommendations in the past were kept under Sealed cover, must have been opened during the period and found satisfactory for being given promotion by the competent authority and the same would have been done making the total number to 52 as submitted by the Id. counsel for the applicant.

(xi) From the list of the officers who achieved the bench mark of 'very good' against the vacancies for 1990-91 the name of the applicant appears at sl. No. 41. The name of the officers immediately after him is the name of Sri Mohan Singh who has been given promotion on 18.1.94 as per Sl. No. 280 of the civil list of 1995.

(xii) The officers found to have achieved 'very good' in the DPC of September 1990 above the applicant were fair in number and thus all the four were given promotion as CIT on 7.9.93, 14.1.94, 20.7.94 and 24.1.94 and not after the DPC of September 1990 and before the DPC of June 1993.

10. From the above it is clear that in all there were 44 actual vacancies and four deputation vacancies total 48 at the time of DPC held in September 1990. Against these 48 vacancies, 13 persons were in panel for the vacancies of 1989-90 and 35 persons for the vacancies of 1990-91. The name of the applicant appeared at sl. No. 41 of the vacancies for 1990-91 and thus five more officers above the applicant were not included in the panel for the vacancy of 1990-91. These persons got promotion after June 1993 and officers immediately below the applicant got promotion in 1994. The other officers who have been shown promoted between September '90 and June '93, the DPC are those officers whose recommendations were kept under sealed cover. Thus it is clear

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that the case of the applicant has been considered by the DPC correctly according to the rules and prescribed procedures. We do not observe any irregularity whatsoever in the case of the applicant. So far as the promotion of the 52 officers as submitted by the Id. counsel for the applicant in the R.A. is concerned, the same has been discussed in detail in the above paragraphs and we do not find any irregularity or mistake either in the DPC proceeding or in the promotion given to the eligible candidates. The interest of the applicant has not been prejudiced by the DPC proceeding of September 1990 in any way. In view of the above, we do not find any justification to interfere in our order dated 27.02.2000 already passed by us.

11. In view of the above discussions and observations, we do not find any error apparent or mistake in our order dated 17.02.2000. The confusion arose because the DPC proceedings of September 1990 was not discussed in such a great detail at the time ⁱⁿ of our order dated 17.02.2000 vis-a-vis the civil list of officers of 95 as has been done in this order in the preceding paragraphs. We, therefore, find no merit in the review petition and reject the same without any order as to cost.

B.P. Singh
(B.P. Singh) 27042001
Member (A)


(R.N. Ray)
Vice-Chairman.

a.k.c.