

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A.1171 of 96

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.

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

Sri B. Biswas, alias Baroday Biswas,
son of late Priyanath Biswas, aged
about 54 years, employed as
Additional Commissioner of
Income Tax, Ayakar Bhawan of P-7,
Chowringhee Square, Calcutta,
resident of 92, Charu Chandra Place,
Police Station-Tollygunge, Cal-33.

- 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-110 003.
3. Chairman, Central Board of Direct Taxes,
North Block, New Delhi-110 001.
4. Shri Mohan Singh, Commissioner of
Income Tax (Appeals)-IV,
Ayakar Bhawan, M.K. Road,
Mumbai-400 020.

...Respondents.

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

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

Heard on 20.1.2000

Order on 17.2.2000

O R D E R

B.P. Singh, AM

This O.A. has been filed by Sri B. Biswas against omission of his name in the promotion list issued in December, 1991 and August, 1996. The applicant has prayed for the following reliefs in this O.A.:-

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

(b) Review DPC for selection of CIT may be convened for 1993 list wherefrom applicant's immediate junior was promoted on 18.1.94 taking into consideration expunction of adverse remarks for the years 1990-91 and 1992-93, the former on 8.1.1994 and the later on 30.11.1993.

(c) The applicant may be given all consequential benefits from the date of his promotion as CIT, for, he was not at fault for the delay in shouldering higher responsibility;

(d) The reporting officers may be visited with penalty as per decision of the Supreme Court in Sukhdeo-Vs-Commissioner of Amravati Division.”

2. The fact of the case is that the applicant ~~was~~ joined the Indian Revenue Service in July, 1970. He was promoted as Deputy Commissioner of Income Tax (DCIT) in 1980. He was further granted selection grade from 1.4.96 and promoted as Additional Commissioner of Income Tax (Addl. CIT) from 1995. The applicant submits that he was considered for promotion as Commissioner of Income Tax (C.I.T.) by the D.P.C. headed by the UPSC Chairman/Member in 1990. He firmly believes that he was recommended by DPC. His belief is confirmed by the letter dated 23.10.90 from the respondents seeking his option as to posting as C.I.T. The applicant was shocked to find that his name was omitted from the list of promoted officers to C.I.T. grade published in December '91 (Annexure-A/5). He came to know that his name was held up from the list because of adverse remarks of CIT, WB-II. During the year 1991 he was asked to hold additional charge of D.C.I.T., Calcutta from August '90 and further additional charge of D.C.I.T., Acquisition Calcutta. While C.C.I.T., WB-II wrote the A.C.R. for the whole year. C.I.T., WB-II under whom the applicant held additional charges wrote another A.C.R. for the whole year though applicant held additional charge for eight months from August 1990 to March 1991. C.I.T., WB-II made some adverse ^{remarks} against the applicant in the A.C.R. for 1990-91 which was expunged by the Department of Revenue on 5.1.94 vide Annexure-A/1. C.I.T. WB-IX further made adverse remarks in the A.C.R. of 1992-93 though he worked under him for three months only. This remarks was also expunged by the Deptt. vide their letter dated 30.11.93 Annexure-A/2. There were further

promotion lists in 1993, 1994 & 1995. But the applicant's name was not in the list of promoted officers. He made representation to the Chairman, C.B.D.T. on 21.8.95 vide Annexure-A/3. The representation remained un-replied till the date of filing of this O.A. In the promotion list dated 21.8.95 Annexure-A/6 the applicant's name was again omitted. This all happened when the applicant had earned commendation for excellent work several times. The applicant has been a champion sportsman amongst civil servants as would be clear from Annexure-A/7. The applicant states that there are other certificates like this. The applicant belongs to Scheduled caste category. He has put in more than 26 years of service in Gr.A and yet his promotion was held up on account of ACR written by C.I.T. WB-II for eight months in 1990-1991 and C.I.T. WB-IX for three months in 1992-93. These adverse remarks were vindictive and the same is proved by their expunction orders stated above. The position of the applicant amongst eligible candidates was at Sl. No.2 in 1990 DPC ~~order~~ ^{and} on his promotion ~~has been~~ ^{was} held up due to machination of some of his senior colleagues. The applicant further submits that now reservation extends to Gr.A officers as well. He has submitted that the prescribed quota for scheduled castes has not been filled up against the total sanction strength of C.I.T. The applicant's immediate junior Shri Mohan Singh was promoted as C.I.T. on 18.1.94 and obviously his selection was made prior to 8.1.94 when adverse remarks against the applicant were expunged vide Annexure-A/1. The applicant had lost his due chance of promotion as C.I.T. because of unauthorised and vindictive remarks of C.I.T. WB-II and WB-IX and his representation against his supersession has also not brought any relief to him. He was, therefore, compelled to approach this Tribunal for redressal ^{of} his grievances with the reliefs prayed for as stated above.

3. We have heard Mr. R.K.C. Thakur, Id. counsel appearing for the applicant and Mr. B. Mukherjee for the respondents. We have gone through the reply to the O.A. The respondents have also produced the

that the adverse remarks were made by the C.I.T. WB-II and WB-IX due to vindictiveness. The remarks were expunged later on but the injury inflicted upon the applicant is still continuing. In view of the above facts and circumstances, the Id. counsel submitted that a great injustice has been done to the applicant which requires to be remedied by the Tribunal by granting reliefs prayed for.

5. The Id. counsel Mr. Mukherjee for the respondents in his reply submitted that the post of C.I.T. is a selection post and promotion to the said post is to be made by selection on merits. The DOPT office memorandum dated 10.4.89 provides the selection method in detail. The said office memorandum stipulated that the list of candidates considered by the DPC and overall grading assigned to each candidate could form the basis for preparation of the panel for promotion. The bench mark grade has been determined by the said office memorandum for each category of post. The applicant was considered for promotion to the Grade of C.I.T. by the DPC held on 20-21 September '90 and was graded 'very good' but could not be included in the panel as there were only 31 vacancies and the applicant was at Sl. No.41 of the list of officers considered by the DPC. The next DPC was held on 3rd and 4th June '93. This DPC considered only 22 officers as there were only 9 vacancies. The applicant was not in the consideration zone ^{according to} seniority list. Further DPC was held in October '93 in which the applicant was within the zone of selection and considered. He was graded 'good' and, therefore, could not reach prescribed bench mark of 'very good' and, therefore, he was not recommended for promotion. The adverse remarks recorded in the ACR of the applicant was expunged in November '93 and consequently review DPC was held on 4.10.94 which also graded him 'good'. Subsequently ^{DPC} ~~this was~~ held in March '95 and March and April '96 also considered the applicant for promotion. On the basis of the ACRs for the relevant period the applicant was assessed by the DPC as 'good' only. Therefore, he was not recommended for promotion in the panel of officers. Thus the applicant missed his promotion for want of comparative merit. The representation dated 21.8.95 (Annexure-A/3) was duly examined by

relevant departmental records for our perusal alongwith the minutes of the Departmental Promotion Committee.

4. The Id. counsel Mr. Thakur for the applicant has submitted that the applicant was recommended by the DPC ⁱⁿ 1990 for promotion to the Grade of C.I.T. As per his information the position of the applicant was at Sl.No.2 in the DPC list of 1990. But the promotion of the applicant was held up due to adverse remarks of C.I.T. WB-II. As these remarks were expunged on 5.1.94 as per Annexure-A/1 the position of the applicant in the DPC list of 1990 ought to have been restored and he ought to have been treated as promoted from that list as per his position ^{as} ~~and~~ one SC post of C.I.T. was available at that time. The fact of inclusion of the name of the applicant in the DPC list of 1990 is confirmed vide Annexure-A/4. The list should be fully honoured and given effect to, from the due date viz. 24.12.91 when others were promoted as C.I.T. from that list. The Id. counsel further submitted that decision of the Hon'ble Apex Court in R.K. Sabhanwal's case (SC SLJ 1995(1) 330) that percentage of reservation has to be worked out in relation to the number of posts which form the cadre strength has not been followed by the respondents. Because against the effective cadre strength of C.I.T. being 348 there are 27 SC officers though it ought to be 52 ³ at the rate of 15%. This is bad in law against the reservation policy of the Govt. and the Supreme Court's decision. The Id. counsel further submitted that from 1990 DPC list 52 D.C.I.T. ^{were} ~~was~~ promoted as C.I.T. Out of whom only 7 belongs to SC though it ought to have been 8. As per judgment in V. Lakshmi Narayan -Vs- Union of India 1992(1) ATJ 611 that vacancy ought to have been filled up by the applicant. ~~The~~ Id. counsel further submitted that his immediate junior Shri Mohan Singh (SC) was promoted on 18.1.94 and adverse remarks in 1990-91 against the applicant ~~was~~ were expunged on 5.1.94 (Annexure-A/1). Obviously, the applicant was not considered for promotion in 1993 due to delayed action of the respondents, which is further proved by the fact that adverse remarks in 1992-93 were expunged much earlier on 30.10.93 (Annexure-A/3) whereas that of 1991 were expunged on 5.1.94 (Annexure-A/1). The Id. counsel further submits

the Department, but due to reasons mentioned above, it was not considered feasible to accede to his request. The Id. counsel has further submitted that the applicant was not promoted as Additional Commissioner. The designation of the officers under selection grade was changed to Additional Commissioner from Deputy Commissioner. The applicant was considered in all the DPCs held to consider the promotion of the officers for the post of C.I.T. But he was not selected and promoted to the post of C.I.T. due to reasons stated above. The Id. counsel further submits that as soon as the adverse remarks made in the A.C.R. of the applicant were ordered to be expunged, ~~a~~ ^{be} review D.P.C. was held and inspite of the expunction of remarks the applicant failed to achieve the prescribed bench mark and, therefore, he was not recommended for promotion. The Id. counsel has also denied the averments regarding reservation of scheduled caste candidate in C.I.T. post as there is no reservation for promotion to the level of C.I.T. As the promotion to the post of C.I.T. level is made on the basis of selection and the suitability for promotion to the grade is assessed by the DPC, ~~the~~ ^{the} fact that the adverse remarks in the A.C.R. have ^{been} ~~been~~ expunged does not automatically qualify the applicant for promotion to the higher grade. In view of the above submission, the Id. counsel pleaded ^{forcefully} ~~forcefully~~ that the applicant is not entitled to any relief on any of the grounds brought out by the applicant. He further submitted that the respondent authorities have acted fairly and in accordance with the law and no injustice has been done to the applicant. The application is devoid of any merit and hence no relief be granted to the applicant. He, therefore, prayed that the application should be dismissed by the Hon'ble CAT.

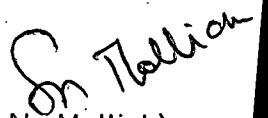
6. We have also gone through the official records and minutes of the DPC proceedings produced before us. We find that the facts stated by the Id. counsel for the respondents are based on the facts available in the official records and they are corroborated by the records.

7. In view of the above we find that the applicant was considered for promotion to the post of C.I.T. in the D.P.C. held in September 1990,

June 93, October '93. Review DPC held on October '94 and DPC held in March 1995 and March and April '96. In the D.P.C. held in September '90 the applicant was graded 'very good' and thus achieved prescribed bench mark. But since he was much below in the list he could not be recommended for promotion as C.I.T. In the subsequent DPC, since vacancies were less, the applicant did not come in the zone of selection. In the next DPCs, he came under the zone of selection and was considered but could not achieve the prescribed bench mark. After the expunction of the adverse remarks, review DPC was also held with the changed ACR. But in the said DPC the applicant failed to achieve the prescribed bench mark. The subsequent DPC was held in 1995-96. But the applicant could not achieve the prescribed bench mark in the said D.P.C. It is thus clear that he was considered according to the guidelines for selection and in accordance with the law. Since the post of C.I.T. is a selection post the selection has to be done on comparative merit only. The case of the applicant has been considered according to the law and procedures prescribed by the Government for such promotion. The respondents have acted fairly and according to the provisions of law. No injustice has been done to the applicant. We do not find any merit in the application and, therefore, we reject the application accordingly without any order ^{any} ~~to pass~~ as to cost.



(B.P. Singh)
Member (A)



(S.N. Mallick).
Vice-Chairman.

a.k.c.