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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order ; 22.6.2000.

O.A. No. 159/1999

Miss Santosh Sharma, aged 49 years, D/O Brig.
Chandan Singh (Retd), by caste Sharma, resident of
C-165, Shastri Nagar, Jodhpur. At present working
as Addl. Commissioner Income Tax, Jodhpur.

... Applicant

Vs

1. Union of India, through the Secretary, Ministry of
Finance, Department of Revenue, Government of India,
New Delhi.
2. The Chairman, Central Board of Direct Taxes,
New Delhi.

... Respondents

Mr. N.K. Khandelwal, Adv., brief holder for
Mr. M.S. Singhvi, Counsel for the Applicant.
Mr. U.S. Bhargava, Counsel for the Respondents.

CCRAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

Applicant, Miss Santosh Sharma, in this application
under Section 19 of the Administrative Tribunals Act, 1985,
has prayed for quashing the impugned order dated 09.9.1998
(Annexure A/1) and dated 13.5.1999 (Annexure A/2) and for
a direction to the respondents to grant promotion to the
applicant to the post of Commissioner of Income Tax (CTI for
short) with effect from the date persons junior to the

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applicant have been so promoted, with all consequential benefits.

2. Applicant's case is that she had been superseded for ad hoc promotion to the post of CIT vide respondents' order dated 17.10.1997 by following the method of selection by merit instead of the method of selection-cum-seniority subject to rejection of unfit. The applicant has again been superseded for regular promotion to the post of CIT vide respondents' order dated 09.9.1998 and 13.5.1999. Hence, this application.

3. In the counter, it has been contended by the respondents that the applicant was not found fit by the DPC for either ad hoc promotion or regular promotion as CIT.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

5. The applicant had earlier approached the Principal Bench of the Central Administrative Tribunal vide O.A. No.2979/1997 against her supersession for ad hoc promotion to the post of CIT. The above O.A. was decided by the Principal Bench on 23.7.1998 with the following observations

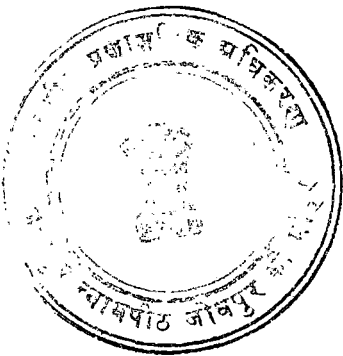
"11. In view of the details aforesaid, we allow these two OAs with the following directions :

(i) Respondents shall duly consider the cases of the applicants for ad hoc promotion to the post of CIT (SAG) on the basis of their position in the seniority list subject to rejection of unfit. Adjustment shall be made only with reference to their juniors unless there are fresh vacancies to adjust the applicants herein without disturbing others. This should be done within a period of two months.

(ii) Persons who have already been promoted on ad hoc basis shall continue to remain wherever they are till a review of the selection by the respondents takes place touching upon the position of their relative seniority;

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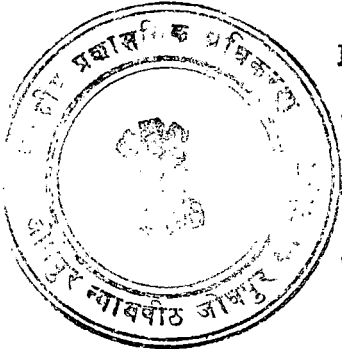
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(iii) Applicants shall not be entitled to benefits like arrears of pay and allowances since they had not actually shouldered the higher responsibilities of the post; and

(iv) There shall be no order as to costs.*

6. Though, in terms of above directions, the respondents had to consider the case of the applicant for ad hoc promotion to the post of CIT as per her seniority position, respondents, however, issued regular promotion orders to the post of CIT vide orders dated 09.9.'98 and 13.5.1999. Thus, the directions of the Tribunal became infructuous. The applicant has now challenged these orders dated 09.9.'98 and 13.5.1999 on the grounds that these orders are in contravention of Government of India Circular dated 27.3.1997 and further that her service record has all along been very good/ outstanding and she should not have been ignored for regular promotion to the post of CIT.



7. The post of CIT is a selection post and is required to be filled up by the method of selection by merit. Govt. of India Circular dated 27.3.1997 provides that :

* In respect of the posts in the level of Rs.3700-5000 and above, the bench mark grade shall be 'Very Good' and will be filled by the method of 'selection by merit'. The DPC would grade the officer as 'Outstanding', 'Very Good', 'Good', 'Average' and 'Unfit' as the case may be. However, only those officers who are graded 'Very Good' and above, will be included in the select panel, by placing the officer graded as 'Outstanding' on top followed by those graded as 'Very Good' subject to availability of vacancies."

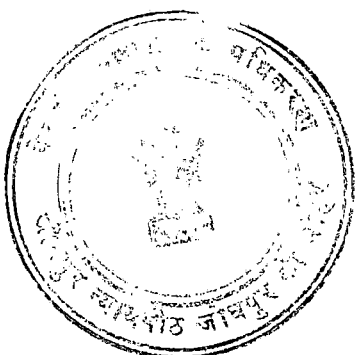
Further procedure to be adopted by DPCs has been detailed in Government of India O.M. dated 10.3.1989, relevant portion of which reads as under :

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*2.2.1 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence-

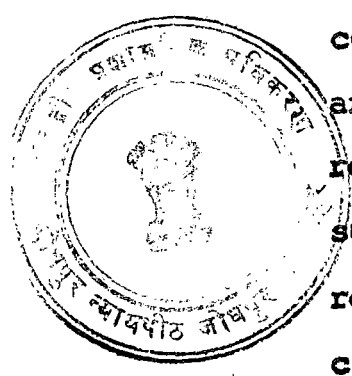
- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.
- (b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year).
- (c) Where one or more CRs have not been written for any reason during the relevant period the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the CRs of the lower grade into account to complete the number of /CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.
- (d) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade.
- (e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs, but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.
- (f) If the Reviewing Authority or the Accepting authority as the case may be has over-ruled the Reporting Officer or the Reviewing authority as the case may be, the remarks of the latter authority should be taken as the final remarks for the purposes of assessment provided it is apparent from the relevant entries that the higher authority has come to a different



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assessment consciously after due application of mind. If the remarks of the Reporting Officer, Reviewing authority and Accepting authority are complementary to each other and one does not have the effect of overruling the other, then the remarks should be read together and the final assessment made by the DPC."

8. It would be seen from these provisions that the DPC has to make its own assessment of the officer as reflected in Confidential reports. The contention of the applicant is that her service record as reflected by the Confidential reports should be very good/outstanding is her personal belief. Further, the contention of the applicant that if there has been any downgrading in her Confidential report, the same is illegal as the applicant has not been informed of such downgrading and as such the same cannot be taken into consideration by the DPC. Here, it is pointed out that there are no instructions/rules under which fall in standards is required to be communicated to the officer concerned. As such an officer would not know whether his/her Confidential reports are outstanding/very good/good or average. Non-communication of any adverse remarks does not imply that the CRs are very good/outstanding. Thus, these contentions of the applicant are not tenable. Moreover, the applicant has not attributed any mala fide in consideration of her case for promotion to the post of CIT.



9. In the light of above discussion, we do not find any merit in this application and the same deserves to be dismissed.

10. The Original Application accordingly dismissed with no order as to costs.

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11. Before parting with this O.A., we would, however, like to record that if an officer is getting the grading in his/her Confidential reports below the bench mark fixed for promotion to the higher grade such a report would go against the officer at the time of consideration of his/her case for promotion to the higher post and he would come to know of it only when he is superseded. In such circumstance, we consider it just and appropriate that such Confidential reports, though not adverse, should be communicated to the officer concerned so that he/she can improve upon his performance and achieve better standards.

12. A copy of this order may also be sent to Ministry of Pension, Public Grievances & Personnel, Department of Personnel & Training, for necessary action in the light of above observation.



Gopal Singh
(GOPAL SINGH)
Adm. Member

B.S. RAIKOTE
(B.S. RAIKOTE)
Vice Chairman

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