

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 05/2010

Date of order: 30-3-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Narendra Kumar Jain S/o Late Shri Ghewarchandji Jain, aged about 59 years, presently working as Commissioner of Income Tax, Income Tax Department, Jodhpur r/o V/2, Income Tax Department, Polo II, Mandore Road, Jodhpur.

...Applicant.

Mr. Manoj Bhandari, counsel for applicant.

VERSUS



1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, North-Block New Delhi – 110 001.
2. The Cabinet Secretary to the Government of India, Cabinet Secretariat, Raisinha Hill, South Block, New Delhi.
3. The Central Board of Direct Taxes (CBDT) through its Chairman, Finance Ministry, Department of Revenue, North-Block, Central Secretariat, New Delhi – 110 001.
4. The U.P.S.C. through the Chairman, Dholpur House, Shahjahan Road, New Delhi – 110 001.
5. The Member (Personnel), the Central Board of Direct Taxes, North-Block, Central Secretariat, New Delhi – 110 001.
6. The Chief Commissioner of Income Tax, Jodhpur.

... Respondents.



Mr. Varun Gupta, counsel for respondent Nos. 1,2,3, 5 & 6.
Mr. M. Prajapat, proxy counsel for
Mr. Ravi Bhansali, counsel for respondent no. 4.

ORDER**Per Hon'ble Dr. K.S. Sugathan, Administrative Member**

The applicant is presently working as Commissioner of Income Tax at Jodhpur. He belongs to the 1976 batch of the Indian Revenue Service. Aggrieved by the denial of promotion to the post of Chief Commissioner of Income Tax, he filed this Original Application seeking the following relief:

"(i) by an appropriate order or direction, the respondents be directed to promote the applicant on the post of Chief Commissioner of Income Tax with all consequential benefits against the vacancies of the year 2008-09.

(ii) by an appropriate order or direction, the decision taken by the Review DPC held on 23rd Oct., 2009 may kindly be directed illegal and the respondents be directed to reconsider the case of the applicant and grant promotion to the post of Chief Commissioner of Income Tax from the date his juniors have been ordered to be promoted with all consequential benefits.

(iii) by an appropriate order or direction, if any orders are passed during the pendency of the present original application to declare the applicant as unfit for the post of Chief Commissioner of Income Tax, the same may kindly be declared illegal and be quashed and set aside with all consequential benefits.

(iv) In the alternative, by an appropriate order or direction the Appointment Committee of the cabinet be directed to overrule the recommendation of the DPC because the recommendations are only advisory and not of binding nature. There are umpteen number of such precedents which will be produced before the Hon'ble Court.

(v) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

2. The applicant was originally considered by the DPC held on 18.11.2008 for promotion to the post of Chief Commissioner of

Income Tax (CCIT). The DPC however did not recommend his case for promotion presumably on the ground that in one of the five years' ACRs i.e. for the year 2006-07 he was rated as 'Good', which is less than the Bench-mark. The applicant filed an O.A. in this Bench of the Tribunal challenging the decision of the respondents (OA-252/2008), which was admitted and an interim order to the effect that one post of CCIT be kept vacant and any promotion that might be ordered will be subject to the outcome of the O.A. was issued. Subsequently, the said O.A. was transferred to the Principal Bench of this Tribunal and was numbered as OA 1540 of 2009. The Principal Bench allowed the said O.A. and the respondents were directed to communicate the ACR of the year 2006-07 to enable the applicant to make a representation against it. It was also directed that after considering the representation, if the applicant is able to secure a confidential report which is commensurate with the required benchmark, the respondents would convene a review DPC to consider the case of the applicant. The applicant thereupon submitted a representation which was considered by the competent authority and an order was issued on 24.09.2009 by the respondent No.1 stating that the applicant's performance during the year 2006-07 cannot be construed as being below par for being eligible for promotion to the grade of Chief Commissioner of Income Tax (Annex. A/9). Subsequently, the case of the applicant was considered by the Review DPC held on 23.10.2009. But the DPC again declared him as "unfit" for promotion on the ground that the competent authority which considered the representation of the applicant against the grading

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for the year 2006-07 has not placed any vital justification to support its decision as to conclude that the ACR meets with the required benchmark of "very good".

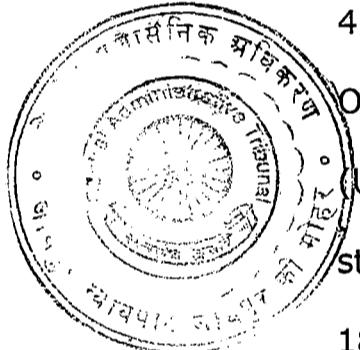
3. It is contended by the applicant that the conclusion reached by the competent authority who considered his representation against the grading in the ACR of 2006-07 clearly establishes that his grading is to be treated as Very Good or outstanding. The competent authority has considered the previous record of the applicant as reflected in the ACRs of the previous years and also his performance in 2006-07 and have come to the conclusion that the ACR for 2006-07 cannot be treated as below the required bench-mark. The applicant has in this regard relied on copy of the note-sheet of the respondent No.1 (obtained under the RTI) in which the representation was considered and decision taken (Annex. A/14). The applicant has relied on the judgments of the Chennai Bench of this Tribunal in **Sudhir Chandra v. UOI & Ors.** (OA 61 of 2010 - Annex. A/20). In Sudhir Chandra case supra the Chennai Bench of the Tribunal has given a direction to the respondents to ignore the ACR of the year 2005-06 and place the matter before a review DPC by its order dated 18.03.2010 (Annex. A/20). Shri Sudhir Chandra is a batch-mate of the applicant. He was also overlooked for promotion to the grade of CCIT in the DPC held on 18.11.2008. The facts of the case of Sudhir Chandra are identical. The applicant has also relied on several other judgments of this Tribunal as well as those of Hon'ble Supreme Court, in particular the case of Dev Dutt vs.

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Union of India & Ors. [(2008) 8 SCC 725], Abhijit Ghosh Dastidar vs. Union of India & Ors. (SLP No.26556 of 2004), OA No. 592 of 2009 of the Principal Bench of this Tribunal. (Sanjay Kumar vs. Union of India & Ors.), OA No. 3524/2009 of the Principal Bench of this Tribunal (V.K.Singal vs. Union of India & Ors.), OA No. 1684/2009 of the Principal Bench (H.S.Acharya vs. Union of India & Ors.) and OA No. 41/2010 of the Principal Bench (Vijay Sharma vs. Union of India & Ors.). The applicant has also referred to the cases of Smt. Sudha Sharma and Shri H.S.Acharya who have been promoted in spite of their having been declared unfit by the DPC.

4. Two separate replies have been filed by the respondents. One by the respondent No.4, the Union Public Service Commission (UPSC) and the other reply by the rest of the respondents. It is stated in the reply filed by the UPSC that in the DPC held on 18.11.2008 the applicant was considered along with others. The ACRs of five preceding years i.e. 2002-03, 2003-04, 2004-05, 2005-06 and 2006-07 were considered. The applicant was declared as unfit. The applicant had challenged the aforesaid decision and as per the directions of the Tribunal the ACR for the year 2006-07 was communicated to him and his representation was considered by the competent authority which came to the conclusion that the ACR of the applicant for the year 2006-07 cannot be construed as below par for being eligible for promotion. Accordingly, the applicant's case was again considered in the review DPC held on 23.10.2009. While considering the case of the



applicant on 23.10.2009, the Committee observed that the competent authority (which considered the applicant's representation against the entry in the ACR of 2006-07) has not placed any vital justification in support of its decision so as to conclude that the ACR meets with the required benchmark of very good. The Committee further observed that the overall grading of good as recorded by the reporting officer was fully commensurate with the attributes recorded in different columns of the ACR and therefore the DPC decided to stick to its original decision of the applicant being unfit for promotion. As per the DOPT's OM dated 10.04.1989, the DPC enjoyed full discretion to devise their own methods for objective assessment of the candidates and it should not be guided by grading recorded in the ACR, but make its own assessment. There are several judgments of the Hon'ble Supreme Court, which have held that the Courts/Tribunals should not sit in judgment over the selection made by the DPC. The guidelines issued by the DOPT as well as the principles laid down by the Hon'ble Court have been followed.

5. In their reply the respondents No.1,2,3,5 and 6 have stated that as per the directions of the Tribunal, the ACR of 2006-07 was communicated to the applicant and the representation received from him was considered by the competent authority. The case was sent to UPSC for consideration by a review DPC. The recommendations of the review DPC are under the consideration of the Appointments Committee of the Cabinet. As per the DOPT

OM dated 06.01.2010 only the DPC can re-grade the overall grading of the ACR (Annex. R/1).

6. We have heard the learned counsel for the applicant Shri Manoj Bhandari and the learned counsel for the respondents Shri Varun Gupta (for respondents No. 1,2,3,5 and 6) and Shri M. Prajapat proxy counsel for Shri Ravi Bhansali (respondent No.4). We have also perused all the documents on record very carefully.

7. During the course of the hearing, the learned counsel for the applicant submitted that the issue is covered by the case of Sudhir Chandra supra recently decided by the Chennai Bench of this Tribunal. We have perused copy of the order of the Chennai Bench at Annex. A/20. It is clear that the facts as enumerated in the said judgment are identical with the facts of the present case before us. The reporting and reviewing officer for the year 2006-07 in respect of the present applicant have also retired, as recorded by the respondents in the note-sheets placed at Annexure A/14. It is further seen from the minutes of the DPC held on 23.10.2009 (Annex. A/19) that Shri Sudhir Chandra was also considered for promotion to the post of Chief Commissioner of Income Tax in the DPC held on 18.11.2008. But he was declared unfit by the DPC. Thereafter he filed an OA. The said OA No. 1711/2009 was disposed of with a direction to the respondents to give an opportunity to represent against the grading in his ACR of 2005-06, which was "good" and below the benchmark of "very good". After considering his representation

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the competent authority came to the conclusion that since the report for the period of 06.12.2005 to 31.03.2006 was only for 3 months and 26 days and that all the reports in the earlier period were of or above benchmark, the report for the period in question cannot be construed as below benchmark. On that basis, the case of Shri Sudhir Chandra also came up for consideration before the review DPC on 23.10.2009. However the DPC took the view "that the Department has not placed any proper justification warranting to upgrade the performance of Shri Sudhir Chandra". The said conclusion of the DPC of 23.10.2009 is identical to the conclusion reached by the DPC in respect of the present applicant in this O.A. In the case of the present applicant also the competent authority had considered the representation regarding the "good" entry in one year's ACR and came to the conclusion that it cannot be treated as below par for being eligible for promotion. But the DPC was of the view that the competent authority has not given any vital justification for reaching that conclusion.

8. The Chennai Bench has relied on two judgments of the Principal Bench of this Tribunal (OA No. 49 of 2010 and OA No. 3524 of 2009). The following extract from the judgment of the Chennai Bench is relevant:

"10. Learned counsel for the applicant relied on the orders dated 16.2.2010 passed by the Principal Bench of this Tribunal in Original Applications 49 of 2010 and 110 of 2010. After perusing the said orders, we are of the view that the same is applicable to the present applicant's case. It is also seen from the pleadings that the Principal Bench has passed a similar order covered under O.A. 3524 of 2009 dated 17.12.2009. In the above said cases, the Principal Bench held as follows:

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"Normally this Tribunal following the decision of the Hon'ble Supreme Court in C.A. No. 7631 of 2002 decided on 23.5.2008 in the matter of Dev Dutt Vs. Union of India and Full Bench of this Tribunal in O.A. 24 of 2007 decided on 7.5.2008 in the matter of Ashok Kumar Aneja Vs. Union of India and Others, would have directed the respondents to convey to the applicant his ACR, which may be below benchmark, have representation from him, and if in consideration therefore the ACR of the applicant is upgraded commensurate to the benchmark, consider his case for promotion to the post of Chief Commissioner of Income Tax from the date when others were so promoted. However, admittedly, in the present case, the reporting and Reviewing Officers of the ACR for the year 2007-08 have since already retired. That being so, following the judgment of the Hon'ble Supreme Court in Abhijit Ghosh Dastidar vs. Union of India and Others (SLP No. 26556/2004 decided on 22.10.2008) and the decision of this Tribunal in the matter of O.P. Meena vs. Union of India and Others (O.A. No. 1178 of 2009 decided on 14.10.2009), we disposed of this Original Application directing the respondents to ignore the ACR for the year 2007-08 and taken into consideration the ACR for the year 2002-03 which commensurate to the benchmark.

Respondents would constitute a review DPC to reconsider the case of the applicant for promotion to the post of Chief Commissioner of Income Tax in the light of the above observations, and in consideration of the ACR, as mentioned above, and if he is found fit for promotion, the said promotion shall be given to him from the date his juniors were promoted with all consequential benefits.

Let the directions as ordered above be complied with as expeditiously as possible and preferably within a period of four weeks from to-day."

9. In view of the above, we are of the considered opinion that the present case is covered by the judgment of the Chennai Bench of this Tribunal in OA No. 61/2010

10. For the reasons stated above, this Original Application is disposed of with a direction to the respondents to convene a review DPC to consider the promotion of the applicant on the basis of his ACR for the year 2001-02 instead of the ACR of 2006-07 i.e. consider the ACRs of the years 2001-02 to 2005-06 instead

of the ACRs of 2002-03 to 2006-07. The exercise of reconvening of the review DPC on the basis of the aforesaid direction shall be completed within a period of four weeks from the date of receipt of copy of this order and if the applicant is found fit for promotion he shall be promoted with effect from the date on which his juniors have been promoted with all consequential benefits.

There is no order as to costs.



(DR. K.S. SUGATHAN)

ADMINISTRATIVE MEMBER



(JUSTICE S.M.M. ALAM)

JUDICIAL MEMBER

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Recd. copy
Bob
1/4/10

Received copy
John
2/2/10

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John
(1/22/10)
John Verner
1/22/10