

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.991 of 1997

Date of order : 1.8.2001

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. V.K. Majotra, Administrative Member

DIPAK KR. NANDI

VS.

UNION OF INDIA & ORS .

For the applicant : Mr. U.K. Dey, counsel

For the respondents : Ms. U. Sanyal, counsel

O R D E R

D. Purkayastha, J.M.

Heard ld. counsel for both sides.

2. Substantial question for decision in this case is that whether the respondents were justified to deny promotion to the applicant from the post of Income Tax Officer to the post of Assistant Commissioner of Income Tax on the ground that he was graded as 'good' in his ACRs for the relevant period, without communicating the same to him before taking the decision of denial of promotion.

3. According to the applicant, he is working in the department since his joining with full satisfaction of the authorities and he maintained very good relationship with both his superiors and subordinates as well as public throughout his service career. He states that he has never received any communication from his superiors regarding shortcomings either

contd..2

in the field of work or any related matter for the last 5 years. The applicant further states that his juniors have been promoted to the post of Assistant Commissioner of Income Tax by office order dated 10.4.97, but he has been deprived of the promotion. Being aggrieved by such action of the respondents, he made representation to the authorities on 17.4.1997 (Annexure 'C' to the O.A.), but the respondents did not consider his grievances. Therefore, he approached this Tribunal for getting appropriate relief.

4. The respondents have filed written reply to the O.A. It has been stated by the respondents that the applicant was considered for promotion to the post of ACIT alongwith others by the DPC held in February, 1997. On the basis of his ACRs for the relevant period, the DPC assessed him as 'Good' only and on this grading he was not recommended for promotion as sufficient number of officers with better grading were available to meet the number of vacancies and as a result, the applicant missed his promotion for want of <sup>relative</sup> merit. It is further stated by the respondents that none of the officers junior to the applicant, who were graded as 'Good' have been recommended for the panel of the promotion in question. It is also stated by the respondents that Sri Manoranjan Biswas who was promoted to the post of ACIT was assessed as 'Very Good' by the DPC and for that reason he was given promotion though he was junior to the applicant. So, no irregularity was committed by the respondents in this matter.

5. Ld. counsel Mr. U.K. Dey for the applicant has drawn our attention to the O.M. No.22011/5/9--Estt.(D) dated March, 27, 1997 regarding the DPC procedures. Referring to the said O.M., Mr. Dey contends that the applicant is enjoying the pay scale of the post in the level of Rs.3700-5000/- as mentioned in that O.M. and therefore, he should have been guided by the said O.M. He further contends that the assessment of the applicant as 'Good' by the DPC on the basis of his grading in his ACRs should have been treated as adverse remarks since for this reason he was denied the promotion and such remarks ought to have been communicated to the applicant before taking the decision of denial of promotion as per rules. He also states that since no communication has been made to the applicant regarding the adverse remarks before taking the decision of promotion on the basis of the recommendation of the Selection Committee, the entire selection is arbitrary, illegal and liable to be quashed and the applicant is entitled to get the benefit of promotion to the post of ACIT w.e.f. the date his junior got the promotion.

6. Ld. counsel for the respondents Mrs. U. Sanyal submits that the department acted on the basis of the recommendations of the DPC <sup>as per rules</sup> and since the applicant was not recommended for promotion on the basis of his grading in his ACRs for the relevant period, he could not be given the promotion. So, the application is devoid of any merit and liable to be dismissed.

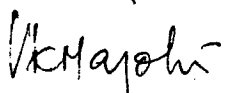
7. We have considered the submissions made by the ld. counsel


for both sides and have perused the records. We find that the DPC under challenge in this case, was held in the month of February, 1997 and the promotion to the post of ACIT to the junior of the applicant was given on 10.4.1997.

The O.M. as referred to above by the ld. counsel for the applicant has come into effect from 27.3.1997. However, the respondents admitted that no other officer except Mr. Manoranjan Bishwas was promoted to the post of ACIT superseding the applicant. Now the question comes whether the grading as 'Good' can be said to be adverse remark or not. We find that similar matter has been decided by the Division Bench of Central Administrative Tribunal, Allahabad in a case of Uday Krishna Vs. Union of India reported in AIR 1996(1) wherein the Tribunal opined that the grading as 'good' should be treated as adverse remark if that is taken into consideration for the purpose of denial of promotion and that ought to have been communicated to the employee concerned. In this case it is admitted by the respondents that no communication has been made to the applicant in respect of the bench mark assessing the applicant as 'GOOD' though on that basis he was denied promotion. Therefore, in view of the aforesaid decision of CAT, Allahabad, we find that the applicant in this case has some genuine grievance.

8. In view of the aforesaid circumstances, we direct the respondents to communicate the remark 'Good' to the applicant as given in his ACRs for the relevant period, if that is treated by them as adverse remark, within a period of 15 days from the

date of communication of this order. The applicant is directed to reply to that communication within a period of 15 days from the date of receipt of the same from the respondents. In this context, the ld. counsel for the applicant submits that his client has already got promotion to the post of ACIT on 6th March, 1998 on the basis of the recommendation of the DPC held later on. Therefore, it is directed that after consideration of the explanations given by the applicant, if the department upgrades the remark given in his ACRs for the relevant period from 'Good' to 'Very Good', then review DPC shall be held for the purpose of promotion of the applicant to the post of ACIT w.e.f. the date his junior got promotion. With these observations, the O.A. is disposed of. No order as to costs.

  
MEMBER (A)

  
MEMBER (J) 1/8/2001