

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.85/2000

Thursday this, the 9th day of January, 2003.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

T.Vinay Mohan,
Commissioner of Income Tax(Appeals), Cochin-18,
Presently working as CIT(A-IV), Calcutta,
residing at Income Tax Quarters, Calcutta.
.. Applicant

(By Advocate Sri O.V.Radhakrishnan)

vs.

1. Union of India, represented by Secretary, Ministry of Finance, Government of India, New Delhi.
2. Central Board of Direct Taxes, represented by Secretary, New Delhi.
3. Chairman, Departmental Promotion Committee for promotion to the cadre of Commissioner of Income Tax, 1996, Central Board of Direct Taxes, New Delhi.
4. K.P.Mandal, Commissioner of Income Tax(Appeals) II, Indore.
5. Sukh Dass, Commissioner of Income Tax(Appeals), Shimla.
6. S.Venkateswaralu, Commissioner of Income Tax(Appeals) II, Hyderabad.
7. Surya Narayananamoorthy, Commissioner of Income Tax, Trichi.
8. R.K.Bhayana, Commissioner of Income Tax(Appeals) XII, Ahmedabad.

.. Respondents

(By Advocate Sri M.R.Suresh (R1-3)

The Application having been heard on 3.12.2002, the Tribunal on 9.1.2003 delivered the following:-

ORDER

HON'BLE SRI A.V.HARIDASAN, VICE CHAIRMAN

The applicant is a senior member of the Indian Revenue Service of 1972 batch. He was promoted as

Commissioner of Income Tax (Appeals), Cochin on 30.9.97. The civil list of Deputy Commissioner of Income Tax /Deputy Directors of Income Tax published by the 2nd respondent on 10.2.1995, the applicant was at S1.No. 46, while the respondents 4,5,6,7 and 8 were at 47, 49, 50, 53 and 51 respectively. The respondents 4 to 7 who were junior to the applicant were promoted as Commissioners of Income Tax by Annexure A2 order dated 21.8.1996 and the 8th respondent was promoted by Annexure A3 order dated 10.10.1996. The applicant who is senior to respondents 4 to 8 was promoted as Commissioner of Income Tax only on 13.9.1997 by Annexure A4 order. The applicant claims to have received encomia from the then Commissioner of Income Tax in 1989-90 for his performance and also in the year 1991 for exceeding the target. The applicant felt that his supersession by respondents 4 to 8 in the matter of promotion was unjustified and therefore, he made a representation on 16.12.1996 to the second respondent to call for the ACRs of the applicant and examine the same and to correct and upgrade them (Annexure A5). As the representation was not considered and disposed of, the applicant filed O.A.823/98 before this Bench of the Tribunal which was disposed of as agreed to by the counsel by an order dated 4.6.1998 (Annexure A6) directing the the second respondent to consider and dispose of the representation. In reply to the above representation, the applicant received the impugned order dated 19.2.1999 by which he was informed that as there was no provision in the rules and extant instructions it was not possible to accept his request for review/upgradation of

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the assessment in the ACRs for the years 1990-91, 1991-92 and 1992-93. Aggrieved by the impugned order Annexure A7 as also by the supersession in the matter of promotion by respondents 4 to 8 as per the orders in Annexures A2 and A3 to the extent they adversely affect the applicant, the applicant has filed this application to quash Annexure A7 communication declaring that the third respondent DPC had no power, authority or jurisdiction to review the service records of officers included in the field of choice in the purported exercise of its power of making overall grading and to record its own grading different from the entries contained in the character roll as adjudged by the authority recording Annual Confidential Reports except for the limited purpose indicated in paragraph 2.2.3 of Annexure R-1 and to declare that the downgrading if any made by the reviewing authority without communicating the same to the concerned official cannot be taken into account. The applicant has also sought for this Tribunal's direction to the respondents 1 to 3 to conduct a review D.P.C. in respect of the vacancies for the years 1995-96, 1996-97 and 1996-97 strictly conforming to the entries contained in the A.C.Rs.

2. The respondents in the reply statement contend that the non-promotion of the applicant for the vacancies of the years 1995-96 and 1996-97 and were not on account of any adverse entry in the A.C.R. or on account of any downgrading, but because he was graded only 'Good' by the D.P.C. , while the bench mark required for promotion was 'Very Good'. They have further stated that as the applicant

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was graded 'Very Good' by the DPC against the vacancies of 1997-98, he was promoted as Commissioner of Income Tax vide the order dated 9.9.1998. According to the procedure to be observed by the D.P.C. in terms of the Government of India, Department of Personnel and Training O.M. dated 10th March, 1989 , the DPC has to make an overall assessment on the basis of entire entries in the ACR not merely on the basis of the grading given in the ACRs .As the applicant's case was considered in accordance with the guidelines , he was found suitable for promotion having obtained the bench mark only in the year 1997-98.

3. We have perused the pleadings and materials placed on record and have heard the learned counsel of the applicant as also Sri M.R. Suresh, the learned counsel appearing for the respondents.

4. The questions that arise for consideration are whether the non-inclusion of the name of the applicant in the ordrs Annexures A2 and A3 by which, along with others respondents 4 to 8 were promoted, was justified and whether the second respondent was justified in rejecting the claim of the applicant for review and upgradation of his ACRs for the period 1990-91 to 1992-93 by the impugned order Annexure A7. Sri O.V.Radhakrishnan, the learned counsel of the applicant argued that as the benchmark for promotion to the post of Commissioner of Income Tax is 'Very Good', if any entry in the ACRs of the applicant during the relevant period did not qualify him to be graded as 'Very Good', such



entries should have been treated as adverse and communicated to the applicant and that as no such communication was made in this case, the supersession of the applicant by respondents 4 to 8 in the matter of promotion, cannot be sustained as the DPC should not have considered the uncommunicated adverse entries. Sri MR. Suresh, the learned Additional Central Govt. Standing Counsel on the other hand argued that as the applicant had not been awarded any adverse entry and the grading 'Good' being not adverse, it was not necessary to communicate the same to the applicant and that therefore there is absolutely no merit in the argument of the learned counsel of the applicant.

5. We have considered the facts and contentions. A Full Bench of the Central Administrative Tribunal sitting at Mumbai had considered the question -

"In the case of selection, where a particular bench mark has been prescribed, whether any gradings in the ACR which fall short of bench mark need to be communicated to the reportee even though the grading/report per se may not be adverse."

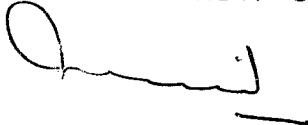
in Sri Manik Chand vs. Union of India and others in O.A.559/2001. After elaborate discussion of the case-law on the point including the judgment of the Apex Court in U.P.Jal Nigam and others vs. Prabhat Chandra Jain and others, (1996)2 SCC 363, the Bench answered the question in the negative. As we do not find any reason to take a different view and are in fact bound to follow the law laid down by the Full Bench of the Tribunal, we find that the argument of the learned counsel of the applicant that for

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non-communication of any entry which would lead the DPC to find the applicant below the bench mark 'Very Good' vitiated the proceedings of the DPC has no force at all. There is nothing in this case which would indicate that there has been a down grading of the ACR or that there had been a steep fall.

6. There is absolutely no allegation of malafides against the DPC as a whole or against any member thereof. The case of the applicant has been considered by the DPC for the vacancies of 1995-96, 1996-97 and 1997-98 along with others in the zone of consideration and because the applicant did not obtain the grading 'Very Good' which is the benchmark for promotion as Commissioner of Income Tax, he was not promoted against the vacancies of 1995-96 and 1996-97, while the respondents 4 to 8, though junior, having obtained the bench mark, were promoted. We do not find any infirmity in the process of selection which calls for interference by the Tribunal. The reply given by the respondent in Annexure A7 order that there was no scope for review and upgradation of the ACRs of the applicant in the absence of any rules or instructions in that regard also cannot be faulted.

7. In the result in the light of what is stated above, the application fails and the same is dismissed leaving the parties to bear their own costs.


(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER


(A.V.HARIDASAN)
VICE CHAIRMAN

- 7 -

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the relevant pages of the civil list - Deputy Commissioners/ Deputy Directors of Income Tax - Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.
2. A-2: True copy of the Order No.120/96 dated 21.8.1996 issued by the 1st respondent.
3. A-3: True copy of the Order No.146 of 1996 dated 10-10-1996 F.No.A-32011/3/95-Ad.VI issued by the 1st respondent.
4. A-4: True copy of the Order No.121 of 1997 dated 13.9.97- P No.A-32011/8/97-Ad.VI issued by the 1st respondent.
5. A-5: True copy of the representation dated 16.12.1996 submitted by the applicant before the 2nd respondent.
6. A-6: True copy of the Order dated 4.6.98 in O.A.No.823/98 of this Hon'ble Tribunal.
7. A-7: True copy of the order F.No.40/Estatt/9/98 dated 19.2.99 issued by the Dy.Commissioner of Income Tax attached to the O/o the Chief Commissioner of Income Tax, Kerala communicating the decision of the 2nd respondent in F.No.A.28011/1/99-DY/Per dated 20.1.99.

Respondents' Annexures:

1. R-1: Copy of No.F.22011/5/86 Estt.D Office Memorandum Department of Personnel and Training Ministry of personnel public grievance and Pension dated 10th March 1989.
2. R-2: Copy of clarification letter dated 23.9.2002 issued by Ministry of Finance and Ministry of Personnel and Training.
3. R-3: Copy of the order in OA No.559/2001 of CAT Mumbai Full Bench.
4. R-4: Copy of OM No.21011/3/83-Estt A dated 30-12-83.

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