

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 801/89

Transfer Application No: ---

DATE OF DECISION 31-3-1993

Chelat Rayern Ramchandra Menon Petitioner

Mr. M.A. Mahalle

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. V.S. Masurkar

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. Priolkar, Member(A)

The Hon'ble Shri V.D. Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(M.Y. PRIOLKAR)
M(A)

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NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.801/89

Chelat Rayern Ramchandra Menon,
 7, Ganga Sagar, 3rd Floor,
 27, Mahant Road, Vile Parle(East),
 Bombay - 400 057. .. Applicant

V/s.

Union of India and ors. .. Respondents.

Coram: Hon'ble Shri M.Y.Priolkar,
 Member(A)

Hon'ble Shri V.D.Deshmukh,
 Member(J)

Appearances:

1. Mr. M.A.Mahalle
 Advocate for the
 Applicant.
2. Mr.V.S.Masurkar
 Counsel for the
 Official respondents.

ORAL JUDGMENT: Date: 31-3-1993
 (Per M.Y.Priolkar, Member(A))

The applicant in this case, who is ~~an~~ a Group B
 Income Tax Officer, has the grievance that he
 was not approved for promotion to Group 'A' post
 by the Departmental Promotion Committee held in
 November, 1987. The prayer in the application is
 for quashing the DPC proceedings and for directions
 that a review DPC be constituted to consider the
 claim of the applicant for promotion.

2. In support of his prayer, the learned
 counsel for the applicant stated that the DPC
 proceedings were vitiated as certain mandatory
 instructions regarding writing of the CRs have
 not been observed and conclusion of the DPC
 was based on consideration of such defective
 CRs. According to the learned counsel, instructions
 require that when an officer serves under more than

one superior officer who is the Reporting Officer, the annual C.R. for that year should be written by one of such officers in consultation with others. Admittedly for the year 85-86 the applicant had served under two different officers but the CRs were written by only one of them under whom the applicant had served on the last date of the financial year and that officer had not consulted the other officers before writing the CR.

3. We have perused the record. We find that during 84-85 the applicant had served from 1-4-84 to 2-7-84 as ITO, SIB and from 2-7-84 to 31-3-85 as 8th ITO BSD(East). We have perused the instructions in respect of writing of CRs contained in the Manual of Office Procedure (Administration) of the Income Tax department which provide that there is no objection to two or more independent reports for the same year being written by different reporting officers in the event of a change in the reporting officer during the course of the year, provided that no report should be written unless the reporting officer has atleast three months experience to base his report. For 1984-85, the report should have, therefore, been written separately for the period 1-4-84 to 2-7-84 and 2-7-84 to 31-3-85. We find, however, that only one report was written for the entire period upto 31-3-85 by the reporting officer who was his superior officer while holding the charge of 8th ITO BSD. According to respondents this has happened because the ITO himself while submitting part-II of his confidential report form for the year 1-3-84 to 31-3-85 has given the details only of

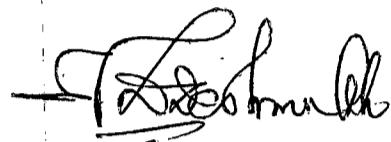
his work as ITO in the second spell of that year namely 2-7-84 to 31-3-85. We have perused the record which confirms this fact. The entire resume of work given is only relating to the later period. No indication has been given in the resume that in the earlier part of the year he was holding a different charge nor he admittedly sent a separate resume of his work during the earlier part of the year to the concerned reporting officer. No doubt there has been an irregularity in the writing of CR for 84-85. But since the applicant himself is partly responsible for this irregularity we do not think that he deserves any relief in this regard. In any case, this report does not contain any adverse remark and no prejudice on this count appears to have been caused to the applicant.

4. Regarding the financial year 85-86 there were three different spells when the applicant held different charges, namely, (i) 1-4-85 to 27-8-85 - 8th ITO BSD(East) (ii) 27-8-85 to 6-10-85 OSD to Chief Commissioner of IT and (iii) from 7-10-85 to 31-3-86 as ITO Company Circle-III(11). He was also on E.L. for 41 days from 15-4-85 to 25-5-85. Under the relevant instructions therefore the second spell namely 27-8-85 to 6-10-85 could have been ignored being less than three months. The first spell even ignoring the period of 41 days E.L. came to more than three months. There should have been, therefore, two reports: one for the period from 1-4-85 to 27-8-85 and the second from 7-10-85 to 31-3-86. We find from the record however, that for this financial year only one CR has been written for the entire period by the officer who had seen

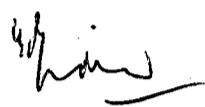
his work only for the last spell during the year. There is thus a clear violation of the instructions contained in the Manual on the subject of writing of CRs. The learned counsel for the applicant has brought to our notice a judgment in the case of P.L.Khandelwal vs. U.O.I., of Ahmedabad Bench of this Tribunal, (O.A.248/89) which has also been referred to in a judgment dt. 26-6-1991 of the New Bombay Bench of this Tribunal in the case of Shivdayal Verma vs. U.O.I.(O.A.204/86) in which it has been held that provisions contained in the CBDT Manual will have statutory force.

5. In view of this violation of instructions, we have no hesitation in holding that the decision of the DPC held in November, 1987 is vitiated so far as the case of the applicant is concerned. Accordingly, we direct that a review DPC should be constituted to consider the case of the applicant as on the date the DPC has met in November, 87, after ignoring the report for 85-86, in accordance with rules. Since the learned counsel for the applicant had expressed his apprehension that the modified confidential report of 86-87 on the applicant might not have been placed before the DPC which met in November, 1987 and there was also no documentary evidence in support of the statement made by the respondents that the modified report was in fact placed before the C.A.T., we would also direct that it should be ensured by the department that before the review DPC the modified report of 86-87 should be placed. It is needless to say that the review DPC should adopt the criteria which were existing at the relevant time for such selections. The selection process

may be completed within a maximum period of six months from the date of communication of this order. If he is selected by the DPC, the applicant will be entitled to all the consequential benefits including arrears of pay and seniority etc. There will be no order as to costs.



(V.D. DESHMUKH)
Member (J)



(M.Y. PRIOLKAR)
Member (A)

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