

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 557/89
ExAxxNo.

198 9

DATE OF DECISION 25/8/

Jagannath Baburao Badve Petitioner

Shri M A Mahalle Advocate for the Petitioner(s)

Versus

Union of India & 2 others Respondent

Shri P M Pradhan Advocate for the Respondent

CORAM

The Hon'ble Mr. U C Srivastava, Vice Chairman

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

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

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY-400614

ORIGINAL APPLICATION NO.557/89

SHRI JAGANNATH BABURAO BADVE
D-12, Hyderabad Estate
Nepean Sea Road
Bombay

.. Applicant

V/s.

1. Union of India
through Secretary
Ministry of Finance
Department of Revenue
New Delhi
2. The Chairman
Central Board of Direct Taxes
New Delhi through its Secretary
3. Union Public Service Commission
through its Secretary
Dholpur House
New Delhi

.. Respondents

Coram : Hon'ble Vice Chairman Justice U C Srivastava
Hon'ble Member(A) Shri M.Y. Priolkar

APPEARANCES:

Shri M.A. Mahalle
Advocate
for the Applicant

Shri P.M. Pradhan
Counsel
for the Respondents

JUDGMENT

(PER: U.C. Srivastava, Vice Chairman)

DATED: 2-5-1991

The applicant challenges
the non-selection to the post of Chief
Commissioner, Income Tax, for which DPC met on 2nd and
3rd January 1989 after his galloping promotions to the
posts of Commissioner of Income Tax Level-II and then
Level-I in which his record was adjudged to be better
than some of the officers who were senior to him in

service hierarchy whom he superseded in seniority-cum-
merit criteria.

2. The Applicant has landed in this Tribunal claiming relief against the law on his application for impleadment of parties. Notices were issued to all those who were selected and they were apprised of the orders passed by this Tribunal that their promotion would be subject to the final orders passed by this Tribunal. As per allegation of the applicant, 3 Income Tax Commissioners who were not empanelled by DPC were promoted by Central Cabinet's decision.

3. Starting his career as Income Tax Officer ^{the applicant} Class-I in 1952, was promoted to the post of Deputy Commissioner Income Tax with effect from 1.4.1988. He was promoted as Commissioner of Income Tax Level-II in February 1981 and was promoted as Commissioner Income Tax Level-I in February 1987. Two years working on the said post was the eligibility criteria for promotion to the post of Chief Commissioner. The applicant's grievance is that he having been placed in the category of 'very good' when he was promoted to the post of Commissioner Income Tax Level-I there was no shortfall in his standard or deficiency in his work he not having been apprised of the same, the communication of which is enjoined under circular No.5/5/72-Estt.(A) dated 20.5.72 and the effectiveness of which has been ^{upheld} ~~held up~~ by High Courts and Administrative Tribunals. It was the entry of 1987-88 which though non-est was considered and he was passed over having been placed in category of 'good' while those promoted were placed in the category of 'very good' or higher than that.

4. The entry of 1987-88 was not given by any reporting officer as during the period he worked under 4 reporting officers viz., Zonal Member, Western Zone, Central Board of Taxes, as Under three of them he worked for less than 3 months, the minimum period for the same, officer and the reviewing/under whom he worked for more than 3 months, unfortunately died after two months without giving entries. Ultimately 'good' entry was given by Shri C.K. Tikku, Chairman, Board of Central Taxes, who was not directly acquainted with the work of applicant. As per allegation of applicant this entry was given by Shri Tikku after his retirement when he had no authority whatsoever to do so. There is no clear and categorical denial of this averment in the written statement filed by Respondents.

5. Para 2(i) of Department of Personnel and Administrative Reform OM No.51/3/74-Est.(A) dated 22.5.1975 provides that after end of each year self assessment not exceeding 300 words is to be submitted to the reporting officer who with his comments is to submit the entire record to next higher officer viz., reviewing officer. Reviewing officer should add his own comments if any and also do the grading in regard to fitness for promotion. Reference was made to OM No. 21011/18/85-Estt(A) dated 23.9.85 of Department of Personnel and Training which gives authority to Reviewing Officer to initiate C.R. but the same is subject to certain conditions which are as follows:

- i) The reviewing officer has been the same for the entire period of report.

- ii) The reviewing officer is in a position to fill in the columns to be filled by the Reporting Officer, and
- iii) where a report is thus initiated by the reviewing officer it is to be reviewed by the officer superior to the reviewing officer.

The contention of the applicant that none of these conditions were satisfied in respect of entry of 1987-88 which were given by the Chairman who otherwise could have been the reviewing officer though he was higher than that. In view of circular dated 23.9.85 referred to above the next superior officer over the Chairman was Revenue Secretary and record also verifies that papers were never sent to him for review. Shri Tikku retired on 30.4.1988 and the applicant's allegation that the entries were given by him after his retirement are based on his statement to the effect that O.S.D. to Shri Tikku viz., Shri P C Chottaray telephoned him on 6.5.88 requiring him to send his self appraisal desired by Shri Tikku, the Chairman. The C.R. entries of the year 1987-88 were thus basically illegal and being non-existent could not have been considered by the DPC which was to consider the previous entries excluding that of 1987-88, but it has got to be accepted in view of clear averments which were not challenged that the same were considered. The applicant's ^{thus} exclusion from promotion was neither legal nor justified.

6. In these circumstances the O.A. deserves to be allowed on this ground without considering any other ground of challenge. The respondents are directed to summon a review DPC which will consider the applicant's record excluding entry of 1987-88. The comparative merit of applicant will be judged along with that of those who were empanelled and promoted excluding those who were not empanelled but were promoted even then at higher level. Their turn could come only if after reconsideration by review DPC posts are available for them. The promotions so made will be deemed to have been set aside and will be substituted by the promotions *on the basis of Review* which will be made by DPC. The review DPC will meet within 2 months of the date of communication of this order. The Original Application is finally disposed of in these terms. There will be no order as to costs.

[Signature]
(M Y Priolkar)
Member (A)

[Signature]
(U C Srivastava)
Vice Chairman