

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:237/2000
DATED THE 8TH DAY OF JANUARY,2003

CORAM:HON'BLE SHRI JUSTICE D.N.CHOWDHARY, VICE CHAIRMAN
HON'BLE SMT SHANTA SHAstry, MEMBER(A)

Gokul Supadu Suryavanshi,
Asst. Commissioner of Income Tax,
Income Tax Office, B.J.Market,
Jalgaon - 425 001. ... Applicant

By Advocate Shri S.P.Saxena

V/s.

1. The Union of India, through
the Secretary, Ministry of Finance,
North Block, New Delhi-110 011.
2. The Chief Commissioner of Income Tax,
Sadhu Vaswani Chowk,
Poona 411 001.
3. The Additional Commissioner of Income Tax,
B.J.Market, Income Tax Office,
Jalgaon - 425 001.
4. The Commissioner of Income Tax,
Ayekar Bhawan,
Near Golf Club, Nasik. ... Respondents

(ORAL)(ORDER)

Per Smt.Shanta Shastry, Member(A)

The only grievance of the applicant in this OA is that while considering him for promotion to the post of Deputy Commissioner of Income Tax in the DPC held on 15/12/1999, a representation given by the applicant against the adverse remarks communicated for the year 1995-1996 was still pending decision. Yet the DPC took into consideration the adverse remarks and did not empanel the applicant. Thereafter the applicant was empanelled in the DPC held in 2000. Being aggrieved the applicant has approached this Tribunal with a prayer to declare that the adverse entries in the ACR for the year 1995 are not sustainable in law and to quash and set aside the impugned order

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dated 11/1/2000 and to direct the respondents not to act upon the ACR for the year 1995-1996 for the purpose of considering the case of the applicant for promotion to the post of Deputy Commissioner of Income Tax and to hold a review D.P.C to reconsider the applicant for promotion to the post of Deputy Commissioner of Income Tax and if found fit to promote him from the date his junior has been promoted.

2. The applicant submits that he is presently working as Deputy Commissioner of Income Tax. Adverse remarks in the ACR for the year 1995-96 were communicated to him on 31/5/1996 for the first time. The applicant was not in a position to make a representation immediately and had sought extension of time. Thereafter he represented against the adverse remarks on 12/7/1996. While the representation was still pending, he received another communication on 9/10/1997 asking him to give his representation to the adverse remarks of the reviewing officer. Thereafter the applicant gave the representation. Finally his representation was rejected by the impugned order dated 11/1/2000 confirming the remarks of the reporting officer.

3. A DPC for considering officers for promotion for the post of Deputy Commissioner of Income Tax was held on 15/12/1999. The applicant was considered. However, he was not empanelled in the light of the adverse ACR received by him for the year 1995-96. The DPC overlooked the fact that the representation given by the applicant against the adverse remarks had not yet been decided. Thereafter another DPC was held in the year 2000 and the applicant was duly considered and empanelled.

4. The applicant's contention is that it is settled law that when a representation against the adverse remarks in the ACR is pending, the said ACR is not to be taken into consideration and yet the respondents proceeded to consider his case alongwith the ACR of 1995-1996 though his representation was pending. This is wrong on the part of the respondents. In the process about 138 officers junior to the applicant have stolen on a march over him in seniority. The learned counsel further contends that he was empanelled in 2000, when also the ACR for the period 1995-95 must have been taken into consideration. It is therefore surprising that he was not found suitable for empanelment in the DPC held on 15/12/1999 itself. Be that as it may. The main contention is that the respondents ought not to have taken into consideration the adverse entries in the ACR of 1995-96 as his representation against the same was pending.

5. The respondents fairly conceded that it is true that applicant's ACR for 1995-1996 which contained adverse remarks and against which the representation of the applicant was pending on 15/12/1999 was taken into consideration by the DPC and the applicant was not found suitable. The learned counsel for the respondents drew our attention to the instructions in the matter issued by the DOP&T wherein it has been stated that a character roll can be acted upon without waiting for the final disposal of the representation. There is no provision under the administrative instructions that action should await the final disposal of the representation. Such a view would merit against the public services.

6. The learned counsel for the applicant further points out that these instructions are of 1976 whereas fresh consolidated

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instructions have been issued by DOP&T in the year 1989 and these instructions are no longer valid as there are several judgements which were pronounced thereafter wherein it has now been settled that if any representation is pending against adverse remarks in the ACRs then the same are to be ignored while considering the employee for promotion by the DPC.

7. We have heard the learned counsel for the applicant as well as the respondents and have given our careful consideration to the pleadings. It is very clear that the respondents had not acted in a proper manner by considering the adverse entries of ACR of 1995-96 of the applicant in the DPC held on 15/12/99. Therefore the non selection of the applicant on the basis of the adverse remarks is not sustainable. It is settled position that when a representation is pending, against adverse remarks the same are to be ignored. Accordingly, as far as the applicant is concerned, the DPCs recommendation regarding his unsuitability for promotion to the post of Deputy Commissioner of Income Tax in the meeting held on 15/12/99 is vitiated.

8. In our considered view, ends of justice would be met if a direction to the respondents is given to hold a review DPC of the DPC held on 15/12/99 and to consider the applicant by ignoring the adverse remarks in the ACR of 1995-96 of the applicant and if found fit to empanel him and promote him from the date his juniors were promoted. We order accordingly. The exercise shall be completed within a period of four months from the date of receipt of copy of this order.

9. In the result, the OA is allowed. No costs.

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(SMT. SHANTA SHAstry)
MEMBER(A)


(D.N. CHOWDHARY)
VICE CHAIRMAN

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