

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:559/2001

Date of Decision: 02/01/2004

Manik Chand

Applicant

Shri P.A.Prabhakaran

Advocate for the
Applicant

Versus

Union of India & 2 Ors.

Respondents

Shri V.G.Rege


Advocate for the
Respondents

CORAM:

Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri S.G.Deshmukh Member(J)

- (i) To be referred to the reported or not?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal?
- (iii) Library.


(A.K.AGARWAL)
VICE CHAIRMAN

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:559/2001

DATED THIS 2nd DAY OF Jan 2004

CORAM: Hon'ble Shri A.K. Agarwal, Vice Chairman
Hon'ble Shri S.G. Deshmukh, Member(J)

Manik Chand,
Additional Commissioner of Income Tax,
(Audit VIII), Room No.307,
Earnest House, Nariman Point,
Mumbai.

... Applicant

By Advocate Shri P.A. Prabhakaran

V/s.

1. Union of India,
through The Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.

3. The Chief Commissioner of Income-Tax,
Mumbai, 3rd Floor, Aayakar Bhavan,
M.K. Road, Mumbai.

... Respondents

By Advocate Shri V.G. Rege

O R D E R

(Per :: Shri A.K. Agarwal, Vice Chairman)

This OA has been filed by the applicant Shri Manik Chand aggrieved by non inclusion of his name in the Order No.72 of 2001 dated 23.6.2001 issued by the respondents promoting 394 Additional Commissioners of Income Tax as Commissioners of Income Tax. The contention of the applicant is that in the seniority list he is at number 12 and the names of officers at Sr.No.11 & 13 are included in the promotion list issued by the respondents.

...2.

The applicant, has further stated that he was last promoted in the year 1994 to the level of Additional Commissioner and has not been communicated any adverse remarks so far. In addition, he has contended that during the period of last 8 years, he has been holding for 5 years the posts carrying a Special Pay of Rs.800/-p.m. Special Pay is generally granted for the arduous nature of duties. Further, if in any of the year his ACR was not meeting the Bench Mark required for promotion then as per the judgement of Supreme Court in U.P.Jal Nigam & Ors. vs. Prabhat Chandra Jain, the grading should have been communicated to him. In the absence of any such communication, the Department cannot take a grading below Bench Mark, if any, into consideration.

2. The applicant on the basis of facts mentioned above has prayed for quashing and setting aside the order no.72 of 2001 dated 23.6.2001 along with the relevant DPC proceedings. It has been further prayed that the Tribunal may call for the ACRs of the applicant from 1994-95 onwards alongwith the DPC proceedings and order the respondents for granting promotion to the applicant alongwith the requisite seniority and consequential benefits with effect from the date on which his juniors were given such benefits.

3. The respondents in reply have mentioned that a High Power Departmental Promotion Committee chaired by a Member, UPSC has gone into the records of concerned officers for making recommendations for promotions from Additional Commissioner,

...3.



Income Tax to Commissioner, Income Tax. The DPC is not solely guided by the overall grading recorded in the ACRs but makes its own assessment on the basis of the total entries in the ACR of a year. The applicant was considered for promotion to the grade of Commissioner, Income Tax and was assessed as "Good" by the DPC. His name was not included in the select panel as the requisite Bench Mark was "Very Good". Regarding the communication of below Bench Mark gradings, the response of the Department is that as per the instructions issued by the DOPT only adverse entries in the ACRs need to be communicated and any fall in the standard is not to be communicated to the officers reported upon. In the case of the applicant, there was no such entry which needed to be communicated as per the prevailing instructions. The respondents have further stated that the ruling of the Supreme Court cited by the applicant in the case of U.P.Jal Nigam is in the context of different sets of rule and instructions of that particular Nigam.

4. This OA was filed on 31.7.2001 and a Division Bench of the Tribunal had vide its order dated 15.2.2002 referred the matter to a larger Bench for consideration of the following issue:-

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

...4.



5. A Full Bench of the Tribunal gave its order on 23.7.2002 after considering all relevant legal points and answered the reference in negative. The considered view of the Full Bench was that there is no need to communicate a non-adverse remark or grading to the concerned Government servant.

6. The learned counsel for the applicant has brought to our notice a judgement of the Bombay High Court given on 27.8.2002 in the case of Dr. Binoy Gupta vs. The Union of India and ors wherein it has been held that non communication of downgrading of ACRs vitiates the promotion proceedings. In this referred case the petitioner had alleged that the ACRs were downgraded on account of a letter written by Chief Commissioner of Income Tax who had cast aspersions about the integrity of the petitioner.

7. We are, as far as the issue relating to non-communication of remarks below Bench Mark is concerned, bound by the finding of the Full Bench. We cannot reopen this issue for any further analysis. We would however like to reproduce the following excerpts from the order of the Full Bench:-

a. There is no need to communicate the non adverse remark of grading to the concerned Government servant. Besides, the government servant only has a right to be considered for promotion and no right for actual promotion or selection. Therefore, it cannot be said

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that any principles of natural justice will be violated if the grading/entry below the Bench Mark are not communicated to the government servant.

b. In para-9 of the Full Bench order the Supreme Court judgement in the case of U.P.Jal Nigam vs. P.C.Jain & Ors has been discussed and view of the Full Bench was as follows:-

"We, however, find from the very first para of the judgement that the judgement was in personam and not in rem. It has been clearly stated therein that what the Court said in the order could not only cover the case of respondent no.1 but also regulate the system of recording Annual Confidential Reports by the decision in the U.P.Jal Nigam, the first petitioner there. Thus, the judgement was applicable only to the case of U.P.Jal Nigam Employees."

c. The Full Bench has essentially relied on a Supreme Court judgement in the case of Baikuntha Nath Das & Anr. vs. Chief District Medical Officer, Banpada and Anr. (1992 (2) SCC 299). In this judgement, the apex Court has held that even where a person is retired compulsorily under FR-56(j), it is not liable to be

...6.



quashed by Court even if uncommunicated Adverse Remarks in the ACRs were taken into consideration for compulsorily retiring the Government servant.

8. During the course of arguments, the learned counsel for the applicant brought to our notice that an MP was also filed on 23/7/2002 for amending clause (A) of para-8 of the OA regarding production of ACRs. In the original OA, ACRs from 1994-95 onwards were requested to be produced on the assumption that the DPC would have considered 5 years ACRs. The amendment sought through MP was for production of all ACRs during applicants' tenure in the Junior Administrative Grade. The Full Bench had also given its order on 23/7/2002 in which the reference made by Division Bench was answered in the negative. It was directed to place the matter before the Division Bench to decide the OA based on the decision of the Full Bench. We find that the case came up for hearing before Division Bench on 14/10/2002 and no mention of MP was made by the learned counsel for applicant. During subsequent hearing also the point of filing MP has not been raised.

9. There is a specific finding of the Full Bench on the issue of non communication of remarks which are not adverse but may be below the bench mark. The order of the Full Bench has not been




challenged by the applicant. Therefore as far as this case is concerned the aforementioned finding has become final.

10. The other issues raised by the applicant like holding of posts carrying Special Pay in 5 out of 8 years, achievement of targets fixed in annual action plans cannot form the basis for promotion in the absence of ACRs of requisite grading. The DPC headed by a Member UPSC makes its recommendations on the basis of total record of the applicant. It has graded him as 'good' after taking all relevant aspects into consideration. In the present OA, no issue regarding downgrading of ACR by any particular authority namely reviewing/accepting authority has been raised. Therefore, we do not see any need to call for the ACRs. Regarding the assessment of ACRs we do not see any reason to differ with the recommendations made by the DPC headed by a Member of UPSC.

11. Keeping in view the facts indicated in Para 9 & 10 above, we hold that no relief as sought by the applicant, can be granted. Therefore, the OA is dismissed. There will be no order as to costs.


(S.G. DESHMUKH)
MEMBER(J)


(A.K. AGARWAL)
VICE CHAIRMAN

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