

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI
ORIGINAL APPLICATION NO. 496/2001

Date of Decision: 29.05.2002

Dr. Binoy Gupta

Applicant(s)

Shri P.A. Prabhakaran.

Advocate for applicants

Versus

Union of India & others

.. Respondents

Shri V.G. Rege.

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

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(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 386/2001

THIS THE 29TH DAY OF MAY, 2002

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHASTRY . MEMBER (A)

Dr. Binoy Gupta,
Resident of D/10
Income Officers' Quarters,
Pedder Road,
Mumbai-400 026.

... Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. Union of India through
The Secretary, Revenue Secretary,
Ministry of Finance, North Block,
New Delhi-110 001.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110 001.
3. The Chief Commissioner of Income-Tax
Mumbai, 3rd Floor, Aaykar Bhavan,
M.K. Road, Mumbai-400 020. ... Respondents

By Advocate Shri V.G. Rege.

O R D E R
Hon'ble Smt. Shanta Shastri. Member (A)

The applicant has approached this Tribunal on account of the grievance that he has not been empanelled for promotion to the post of Chief Commissioner of Incometax (CCIT). According to the applicant he ought to have been considered for empanelment because there was nothing adverse against him. The bench mark for promotion from the Senior Administrative Grade to the

....2.

Super Senior Administrative Grade is 'Very Good'. The applicant submits that as a direct recruit Group-A officer selected to the Indian Revenue Service (IRS) through the UPSC the applicant has been maintaining the minimum standard expected for Group-A officer all along. If there was any deficiency or deterioration in the standard of his performance, the same ought to have been brought to his notice in time. The respondents have never communicated to the applicant any such short coming. He got his promotion to the Senior Administrative Grade without any hitch. Had the reporting officer or the reviewing officer downgraded his ACR he should have been given an hearing. The Reviewing Authority had never called the applicant or held any informal talk on his conduct and standard or inadequacy in the performance in any of the years under report. The applicant apprehends that the Reviewing Authority illegally acted upon confidential letter of the Reporting Officer not only by transferring the applicant and bringing down his otherwise normal image and official standing in the eyes of his colleagues and superiors but also down grading his ACR. Further the action of the reporting officer and the punitive step taken by the reviewing officer in the issuance of premature transfer and posting outside Mumbai has prejudiced successive reporting officers to under-report the otherwise normal grading earned by the applicant. The applicant is relying on the following judgments.

- i) U.P. Jalnigam Vs. Prabhat Chandra Jain (1996) SCC (L&S) 519.
- ii) State of U.P. Vs. Yamuna Shankar Mishra & another
- iii) T. sham Bhat Vs. State of Karnataka & Ors (1997) 35 ATC 405.
- iv) Udai Krishna vs. Union of India (1996) 33 ATC 802.
- v) Shri B.N. Mishra Vs. Union of India & Others OA No.120/99 decided on 07.01.2000.

The ratio laid down in these judgments is that where the bench mark is 'Very Good' or 'Outstanding' a grading lower than that should be treated as adverse and should be communicated to the reported officer.

2. The applicant has therefore prayed to direct production of relevant DPC proceedings and ACRs of the applicant for the past 10 years and quash and set aside the relevant DPC proceedings from where the name of the applicant has been excluded from the panel and to order reconvening of the review DPC.

3. The applicant joined Incometax Department in 1968. The applicant underwent the requisite training and performed the assigned duty well, according to him. The applicant has also enclosed Indian Revenue Civil List of 2000 showing the seniority position of the applicant at Sl. No.130 among the Commissioners/Directors of Incometax. During 1986-93 the applicant had been posted at Madras as Deputy Commissioner of

Incometax. The applicant pursued his academic achievement and secured Post Graduate qualifications like Master of Law, PG diploma in Investment Management, PG Diploma in Insurance Laws, PG Diploma in journalism and Mass Communication. The applicant's wife took Women Entrepreneurs Course in leather goods manufacturing in the S.S.C. Kothari Academy at Madras. The applicant's wife and two lady co-students started a firm under the style of Mass Garments in Madras for manufacturing and exporting leather goods and garments. The applicant had intimated this to the department according to the CCS (Conduct) Rules, 1964. The applicant's wife continued to do business even when the applicant was transferred to Mumbai in 1993. The applicant submits that he had taken proper permission while taking classes for PG Diploma course of Madras University. In 1996 he was suddenly transferred to Karnataka charge and posted to Hubli. The applicant had met the then Chairman with his wife and the Chairman divulged to the applicant the reason for his transfer was that the then CCIT, Mumbai Shri G.S. Siddu had cast aspersion on the integrity and honesty of the applicant in a letter addressed to the Chairman, Central Board of Taxes. It was alleged therein that the applicant had visited Russia for his wife's business. The applicant was misusing the official telephone line and the official car in his wife's business. Punitive action had been suggested including the transfer of the applicant outside Mumbai

on the aforesaid allegation. The CCIT Mumbai had sought clarifications from the applicant on the alleged misuse of office car and telephone. The applicant submitted his clarification. He also satisfied the Chairman according to him with all documentary evidence to show that the allegation lacks any substance. The Chairman had advised the applicant to proceed on leave and promised to look into his matter. In the meantime, the earlier Chairman was transferred and one Shri G.K. Mishra took over as Chairman. He stayed the applicant's transfer and suddenly transfer order was cancelled, posting the applicant to join at Hubli. The Vigilance Department of CBDT also conducted an enquiry on the allegation directly as well as through DGIT. No further action was taken by the respondents in the matter. Therefore, it has to be implied that applicant had been cleared in the whole affair, no show cause notice was issued to the applicant. Later on, his transfer was cancelled and he was posted in Mumbai in June, 1997. According to the applicant, it is because of his doubtful integrity that he must not have been empanelled for the post of CCIT and not because of his performance.

4. The respondents submit that there was no cause for the applicant to approach this Tribunal as nobody junior to the applicant had been empanelled or promoted. The meeting of the DPC consisting of Chairman UPSC as Chairman and the Secretary, Department of Revenue,

Ministry of Finance, Government of India, Chairman of CBDT and Member of the CBDT as its Members was convened and held on 5th and 06th February, 2001 for drawing up a panel for granting promotion to the post of CCIT Group-A against 55 and 46 vacancies for the years 2000-01 and 2001-02 respectively. The names of 114 persons holding post of CIT and the names of ~~12~~ 96 persons holding the post of CIT had been considered. Name of the applicant was not included in the eligibility list of 114 persons for the year 2000-01 as he was not coming within the zone of consideration. The applicant's name was however, included in the list of 96 persons before DPC to be held for the year 2001-02. The respondents submit further that the Committee after scrutinising the ACRs of the applicant for years 1995-96 to 1999-2000 recommended only those persons who could be graded as 'Very Good'. Accordingly 46 persons who were placed on the panel have been promoted and appointed as CCIT. None of the 18 persons, who are seniors to the applicant have been placed on the panel have been promoted and appointed so far. The respondents have also submitted that they followed the due procedure and thereafter worked out the applicant's position. The respondents have also denied that the transfer of the applicant was by way of imposition of punishment. According to the respondents, there was no adverse entry in the ACR of the applicant and therefore, the question of communicating them did not arise. The applicant was not found fit as he could

get only assessment of 'Good' as against the bench mark of 'Very Good'. Therefore, the respondents are justified in not including him in the panel.

5. We have heard the applicant as well as the respondents. What is relevant is to see the DPC proceedings to find out whether proper procedure was followed or not. It is seen from the ACRs of the applicant that the applicant had an outstanding grading during 1994-95. Thereafter, for the next year although the reporting officer had given him the grading of 'Very Good' the Reviewing Officer changed it to 'Good'. Next two years the applicant was assessed as 'Good' only and during the last year of the five year period the applicant got the grading of 'Very Good'. It is seen that no adverse entries were communicated to the applicant. Really speaking there is nothing adverse against the applicant. The applicant has made an allegation against the reporting officer Shri G.S. Siddu. But it is seen that Shri Siddu had given outstanding grading in the earlier year and even in the second year he gave the grading of 'very good' to the applicant. However, against the integrity column he gave a secret note as per procedure laid down by the Government of India. It is further seen that the reviewing officer had made an observation that "the officer has been engaging himself in business activities in his wife's name. His out put as CIT (A) has been

found to be adequate. Over all performance for the year will rank as Good". Thus, the reviewing officer seems to have based his assessment on the applicant's engagement in business on behalf of his wife and not on the basis of actual performance. It is seen that the reporting and reviewing officers were the same authority who had given 'Outstanding' ACR for 1994-95. Thereafter two CRs are only assessed as 'Good'. In the last ACR for the period from 01.4.1999-31.3.2000 again while rating the applicant as 'Very Good' against the integrity column, it has been mentioned that he has vigilance proceedings against him, though during the year he did not come across anything questionable about his integrity. Thus, there is a mention about the doubtful integrity of the applicant. Normally the procedure to be followed in such cases of doubtful integrity is as follows:

"(i) If the officer's integrity is beyond doubt, it may be so stated.

(ii) If there is any doubt or suspicion, the column should be left blank and action taken as under:-

(a) A separate secret note would be recorded and followed up. A copy of the note should also be sent together with the Confidential Report to the next superior officer who will ensure that the follow up action is taken expeditiously. Where it is not possible either to certify the integrity or to record the secret note, the Reporting Officer should state either that he had not watched the Officer's work for sufficient time to form a definite judgement or that he has heard nothing against the officer as the case may be.

(b) If, as a result of the follow up action, the doubts or suspicions are cleared, the officer's integrity should be certified and an entry made accordingly in the Confidential Report.

(c) If the doubts or suspicions are confirmed, this fact, should also be recorded and duly communicated to the officer concerned.

(d) If as a result of the follow up action, the doubts or suspicions are neither cleared nor confirmed, the officer's conduct should be watched for a further period and thereafter action taken as indicated at (b) and (c) above."

6.. It is seen that in the present case a separate secret note was recorded and sent to the next superior officer. Instead of mentioning about integrity in the ACR that report should have been followed up to see whether it was possible to certify the integrity. We find that the procedure has not been followed properly and even the question of integrity does not appear to have been finalised as according to the applicant no charge sheet has been issued to him so far. The existing entry on the integrity in the ACR of 1999-2000 is in disregard of the procedure laid down and without verifying the result of surveillance. Secondly, as far as the bench mark is concerned, it is "Very Good" and the applicant failed to get the bench mark. Being a selection post, the better candidate gets selected. According to the applicant there is downgrading of ACR from outstanding in 1994-95, it has been reduced to "Good" in 1995-96 and the same ought to have been communicated to him in terms of the judgment in the case

of U.P. Jalnigam. We have noticed that although assessment of 'Good' perse may not be adverse in the context of the bench mark fixed for promotion to the higher post, the same needs to be communicated. Even about doubtful integrity, the applicant ought to have been intimated. It has been held in the case of Guruviah Vs. Union of India 1991 (2) CAT SLJ 123 that any entry adverse entries even for doubtful integrity cannot be used against the employee. There is a clear downgrading of the CR of the applicant. We therefore hold that the non-inclusion of the applicant's name in the panel for promotion to the CCIT based on the remarks made on integrity in the ACR and the downgrading of the ACR of the applicant in 1995-96 without giving details of bad performance, but only on the ground of the applicant's integrity, is not correct. The applicant ought to have been given an opportunity. Accordingly, we direct the respondents to communicate the remarks in the ACR of the applicant for the period 1994-95 till 2000-01 and to allow him to represent against the same within a period of one month from the date of receipt of copy of this order. The respondents shall consider the same and pass a speaking order within a period of one month from the date of receipt of the representation from the applicant. If as a result, the gradings in the ACR undergoes a change to the advantage of the applicant, then a review DPC be convened within a period of three months from the date of passing of the speaking

order on the representation and the applicant's case for promotion be considered and if the applicant is found ^{Suitable} ~~fit~~, he may be promoted with all consequential benefits. The OA is accordingly disposed of with the direction as given above. No costs.

Shanta T

(SMT. SHANTA SHASTRY)
(MEMBER (A))

S.L. Jain

(S.L. JAIN)
MEMBER (J)

Gajan

29/5/2
~~Order/Judgement despatched~~
~~to Applicant/Respondent (A)~~
~~on 14/6/02~~
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