

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 265/90

Transfer Application No:

DATE OF DECISION: 16/2/95

Smt. Banani Dasgupta

Petitioner

Shri M.A. Mahalle

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri P.M. Pradhan


Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri P.P. Srivastava, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ? no.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

DA.NO. 265/90

(14)

Smt. Banani Dasgupta ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S. Deshpande
Hon'ble Member (A) Shri P.P. Srivastava

Appearance

Shri M.A. Mahalle
Advocate
for the Applicant

Shri P.M. Pradhan
Advocate
for the Respondents

JUDGEMENT

Dated: 10/2/95

(PER: P.P. Srivastava, Member (A))

The applicant joined the Indian Revenue Services as Income Tax Officer in 1979 and was promoted to Senior Scale in 1983. The applicant has challenged the next promotion for the post of Deputy Commissioner through this DA. and has claimed that she should be placed in the Cadre of Deputy Commissioner of Income Tax just above Shri Anil Kumar Singh who was immediately junior to the applicant in the Civil List of the year 1987 and also that she should be given placement in the Cadre of Deputy Commissioner of Income Tax w.e.f. 9.5.1988 with all consequential benefits.

2. The applicant has pleaded that in the DPC held for the post of Deputy Commissioner of Income Tax for the vacancy in the year 1988, the CRs for the years 1983-84, 1984-85, 1985-86 and 1986-87 were considered which, according to the applicant, cannot be taken into

account as these were written after a lapse of long period and also were not written by the competent authorities who should have written her CRs. The applicant has mentioned that she had been selected to go abroad for training in the year 1984-85 for the Masters Degree in Public Administration and she had submitted her self-appraisal for the confidential report for the year 1983-84. She has also mentioned that similarly she has also submitted her self-appraisal for the year 1984-85 but later on it was informed to her that her ACRs for these two years were not available. The applicant has said that she has regularly submitted the self-appraisal for the year 1984-85 and she has acknowledgement for having submitted the same which is placed at Annexure 'E' to the OA. However, the applicant submitted a duplicate self-appraisal report with reference to respondents' letter of 1987. The applicant has also been informed by the respondents that the ACRs for the year 1984-85 has not been reviewed. The counsel for the applicant has elaborately discussed the rules for preparation and maintenance of confidential report given in Swamy's Compilation on Seniority and Promotion in Central Government Service. The counsel for the applicant has mentioned that even in case where the self-appraisal report is not available, it is the duty of the respondents to initiate and write a confidential report in time and it is incumbent on the reporting officer to write a report without the self-appraisal report after the stipulating period. In the case of applicant's confidential report for the years 1983-84 and 1984-85, even if the respondents have lost the self-appraisal report submitted by the applicant, they should have initiated the confidential report. The counsel for the applicant has specially drawn our attention to [REDACTED] Para (17) at page 49 of the Swamy's Compilation wherein Time

Schedule has been laid down for preparation of confidential reports. In sub-para 2 of Para 17, it has been mentioned that :-

"a reporting officer should not wait till the expiry of the time-limit for self-appraisal of the officer to be reported upon. After the expiry of the first week, if self-appraisal is not received by that time, the reporting officer should take it upon himself to remind the officer to be reported upon in writing, asking him to submit the self-appraisal by the stipulated date. It should also be made clear in the reminder that if the officer to be reported upon fails to submit the self-appraisal by the stipulated date, the report will be written without self-appraisal. If no self-appraisal is received by the stipulated date, the reporting officer can obtain another blank C.R. form and proceed to write the report on the basis of his experience of the work and conduct of the officer reported upon. While doing so, he can also point out the failure of the officer reported upon to submit his self-appraisal within the stipulated time."

The counsel for the applicant has submitted that since the respondents have failed to initiate the confidential report in time and it has been initiated after 4 or 5 years for the years 1983-84 and 1984-85, report for these two years are stale and cannot be taken into account while assessing the performance of the applicant during the DPC.

3. Another ground taken by the counsel for the applicant is concerning the CRs for 1984-85 and 1985-86 that, these CRs have not been reviewed by the reviewing authority and therefore are incomplete and incomplete CRs cannot be taken into account while assessing the performance of the applicant in the DPC.

4. For the CRs for the year 1985-86, the counsel for the applicant has mentioned that the ACRs had been written by Shri Ahmed under whom the applicant did not work for three

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months and also for the year 1986-87, the counsel for the applicant has mentioned that it has been initiated and reviewed by the authority who was not competent to do so as the applicant had not worked under them for stipulated period of 90 days. The counsel for the applicant also mentioned that where all those officers under whom the applicant had worked for more than 90 days should have written the ACRs which had not been done in this case.

5. The counsel for the applicant therefore has argued that the DPC should be re-convened and the case of the applicant should be considered after ignoring the CRs for the year 1983-84, 1984-85, 1985-86 and 1986-87.

6. The counsel for the respondents has mentioned that the applicant was rated 'good' by the DPC which met on 30.3.1988 presided over by a Member of the UPSC. As officers with better gradings were available, she could not find ^a place in the select list. In the ^{of} DPC / March, 1989 she was again rated 'Good'. However, since there were a large number of vacancies available which could not be filled up by promoting only officers who were graded as 'Very Good' and above, the D.P.C. included in the select panel those officers who were graded as good and the applicant was in the said category, that is why the applicant did not find the place in the select panel at her regular place but below the officers graded 'Very Good'. The respondents have mentioned that the procedure for making promotions and functioning of the D.P.Cs is guided and regulated by the instructions issued by the Department of Personnel and Training from time to time and that the DPC had been conducted according to rules.

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7. The respondents have mentioned that the report for the year 1983-84 could not be initiated as the applicant had not submitted her self-appraisal report and therefore she was asked to submit a self-appraisal report again in 1987. The respondents have further mentioned that the reports for the years 1983-84 and 1984-85, though late were written by the officers under whom the applicant had worked for the stipulated time and were available before the DPC which met to consider the case of the applicant. Since the DPC is required to consider the report of 5 years and since 5 years' reports were available, the applicant cannot claim that reports prior to 1983-84 should be considered in her case. The learned counsel for the respondents have further argued that there is no rule which bars consideration of the CRs which had been written late. The respondents' counsel has further argued that this is not a case where there is an adverse entry against the applicant which has resulted into supersession of the applicant but the applicant has been rated as 'Good' while many others have been rated 'Very Good' and above which has resulted in supersession of the applicant. Since there are no rules which would bar the consideration of the reports for the years 1983-84, 1984-85, although written late and which could not be reviewed as the reviewing officer had retired by that time, these reports were submitted to the DPC. The learned counsel for the respondents has also mentioned that the reports for the years 1984-85 and 1985-86 had ^{been} written and reviewed by the competent authority.

8. We have perused the CRs and the chart produced by the respondents. It is a fact that the report for the year 1983-84 was initiated in 1987 and it has not been reviewed. For the year 1983-84 the report had been initiated

by Shri M. Bandopadhyaya which was required to be reviewed by Shri S.P. Singh, CIT but since he retired on superannuation in 1986 before the report was initiated, the review column is blank. The confidential report for the year 1984-85 was initiated by Shri N.K. Jain and it was required to be countersigned by Shri Krishna Sahay who retired before the report could be initiated and therefore it had not been reviewed. For the year 1985-86 the report was initiated by Shri Ahmed and it has been reviewed by Shri K. Prasad, CIT. For the year 1986-87 Shri Ahmed had given his comments for the period 1.4.1986 to 24.8.1986 while Shri N.K. Jain has given the report for the remaining period of the year. The reviewing column in this report is also blank as the reviewing officer is supposed to have retired although his name has not been given in the chart. The counsel for the respondents has argued that since the report for the years 1983-84 to 1986-87 were available and the same were produced before the DPC as non-production of the same could not be justified under any rules, therefore, the respondents had submitted these CRs before the DPC according to rules and since no malafides had been attributed by the applicant against any of the respondents, the reports for the years 1983-84 to 1986-87 are valid documents and could not have been ignored.

9. The counsel for the applicant has relied on certain judgements. One of the judgement quoted by him in support of his case is Madhukar Tandon vs. Union of India & Ors. 1994(3) CAT 474. The case of Madhukar Tandon vs. Union of India is mainly in-consideration of the adverse entries in the CRs. This is also a case where the ACRs for latest two years were not available on a particular date and the question was whether the Screening Committee can go back

to earlier two years to make total number of years of which ACRs have to be considered for promotion and the Tribunal had answered the question in the affirmative. However, in the present case, there is no question of going back on this ground as the ACRs were available and therefore the decision in Madhukar Tandon's case is not of much help to the applicant.

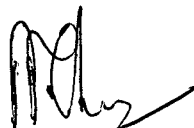
10. The counsel for the applicant has also relied on the judgement in V.R.Nair vs. Union of India & Ors. 1989(2) CAT 311 wherein it was held that writing of ACRs when working under many officers for the stipulated time, it was held that the reporting officer should obtain comments from the other officers while writing ACR.

11. Regarding conduct of the DPC, the counsel for the applicant brought to our notice the case of C.K.Gajanan vs. Union of India & Ors. 1991 (15) ATC 586 in OA.NO. 889/88 decided on February 26, 1990. The counsel has brought to our notice specifically that the DPC should record the reasons and should have indicated as to how it determined relative assessment of merit in the case of IPS officers because it could not be possible without the reasons to have any judicial review and there would be no in-built safeguard to prevent arbitrariness. Since there is no charge of any arbitrariness on the part of the respondents or those who sat in the DPC meeting, the comments in the judgement quoted above do not come to the help of the applicant.

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12. The only question which is required to be decided in this case is whether the late writing of the confidential report and because of that inability of the reviewing authority to give his or her remarks is a sufficient cause for not considering the ACRs for the decision making at the time of DPC. We have given our anxious consideration to this aspect. Firstly, in the absence of any rule, there is no way that the respondents could have with-held these ACRs from the DPC. We are of the opinion that it was for the DPC to decide whether a particular ACR should be considered or not on the basis of defect which may be there in the ACR and they could have called for the previous ACRs if they were not satisfied with the present ACRs. It so happened in this case that the ACRs which have been written at a later date have assessed the applicant as 'Good'. Since there are no adverse remarks in the ACRs, it would be difficult to come to the conclusion that these could not be considered for the DPC, simply because the ACRs have been written late and have not be reviewed. Although it was unfortunate and certainly requires corrective action on the part of the respondents to set their machinery in order, this alone would not make these reports as invalid.

13. We are, therefore, unable to grant the relief sought by the applicant that the applicant's ACRs for the years 1983-84, 1984-85, 1985-86 and 1986-87 should be treated as null and void. Consequently, we do not consider any merit in the OA. and the same is dismissed with no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A)


(M.S. DESHPANDE)
VICE CHAIRMAN