

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 210/90 / 199

Date of Decision: 21-7-98

Balvir Singh

Petitioner/s

Mr. Prabhakaran

Advocate for the
Petitioner/s

V/s.

U.O.I. & ORS.

Respondent/s

Mr. V.S. Masurkar for
Respondents 1. to 8

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R G Vaidyanatha, V.C.

Hon'ble Shri D.B. Baweja, Member(A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to N.D. other Benches of the Tribunal ?

Rajendra Singh
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI-400001

O.A. No. 210/1990

DATED : THIS 31 ^{MY} DAY OF JULY, 1998

Coram : Hon. Shri Justice R.G.Vaidyanatha, V.C.
Hon. Shri D.S. Baweja, Member(A)

Balvir Singh S/o.
Virendra Singh
R/o. Flat No. C-15
Income Tax Colony
Peddar Road
Mumbai
employed as Dy.Commissioner
of Income Tax, working under
the Chief Commissioner of
Income Tax,
Aayakar Bhavan
Mumbai 400020

(By Adv. Mr. Prabhakaran
for Mr. M.A.Mahalle)

..Applicant

V/s.

1. Union of India through
the Secretary
Ministry of Finance
Department of Revenue
North Block
New Delhi
2. The Central Board of
Direct Taxes through
its Secretary
Dept. of Revenue
North Block
New Delhi
3. Union Public Service
Commission, New Delhi
4. Kum. Vatsala Subramoni
5. Smt. Sobha Bhattacharya
6. Krishna Kant Jha
7. Narayan Prasad Bhagat
8. Amarendra Kumar Tewary
9. Fakir Mohan Mohanty
- 10 V H Patil
- 11 Ashok Kumar Garg
- 12 S L Malhotra
- 13 Vijay Kumar Bakshi

14 Smt. Gunjan Mishra
15 S K Chatterjee
16 Sushil Kumar Sahai
17 Arun Chatterjee
18 Smt. Shalini Watel Kaul
19 Smt. Nishi Singh
20 Gian Chand Negi
21 Mane Laxmirajan Hanumanthu
22 Devi Sahai Chopra
23 A. Krishnan
24 J. Rama Mohan Rao
25 Didla Jacob Ratnam Paul
26 Har Prasad Kain
27 Jagtar Singh
28 Amalendu Saha
29 Hari Krishnan
30 P. Amba Shankar Dev
31 V D Parmar
32 Kum. Laldinglani Sailo
33 Home Raikhan
34 D N Mandel
35 Radha M Saha
36 Sonadh Piegu
37 C L Dengzongpa
38 Smt. Nandita Bakshi
39 Chandra Sekhar Dash
40 Rajendra Kumar
41 Ramindra Kaushal
42 N D Wariah
43 T A Theba
44 Vinay Kumar Bansal
45 S R Vikey
46 Sayed Tarique Ahmed

47 Venkatayya
48 N K Sangwan
49 Amal Chandra Roy
50 R P Jain
51 M K Biswas
52 V K Sehgal
53. Smt. Balbir Verma
54 Mrs. Simar Singh Negi
55 Ashwani Kumar Behera
56 K V Dave
57 Pradeep Kumar Das
58 Ashok Kumar Kaushal
59 Rajesh Ojha
60 Prayag Jha
61 Rajesh Chandra Sharma
62 K C Jain
63 Smt. Anita Gupta
64 S K Mishra
65 K N Dhingra
66 U V V S Shyam Sunder
67 Suresh Kumar Satapathy
68 Km. Malini Thadani
69 K K Sinha
70 Gopal Mukherjee
71 Rajeev Bakshi
72 Navrajan Gupta
73 Lal Ratnakar Singh
74 Abrar Ahmed
75 A. Bandyopadhyay
76 Anand Deep
77 Parsh Ram Dhayal
78 Dinesh Verma
79 Ujjwal Kumar

80 M S Chandrasekhoran
81 Smt. Arti Handa
82 Ajit Kumar Srivastava
83 Smt. Neeraj Vinay
84 Ranjit Kumar Sinha
85 S. Mahapatra
86 B K Halder
87 D. Rajesekharan
88 Tridiv Mohendas
89 Subhash Mehra
90 Brahma Nand Verma
91 M. Sampath Kumar
92 Ram Sanchi
93 L S Negi
94 P C Karunakar Solomon
95 A K Mohan Rao
96 B P Meena
97 Smt. Nutan Arvind Wodeyer
98 Smt. Ambika Khatua
99 Smt. Banani Das Gupta
100 K V Nandan Babu
101 Surendra Prakash
102 Sushilchandra
103 C R Shankar Reddy

Respondents 4 to 103 all Deputy
Commissioners of Income Tax
C/o. Central Board of Direct Taxes
i.e., Respondent 2)

(Respondents 1 to 3 by Mr. V.S.
Masurkar, Central Govt. Senior Standing
Counsel)

..Respondents



ORDER

(Per: R.G.Vaidyanatha, Vice Chairman)

1. This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We also place it on record that the learned counsel for the respondents has placed before us the D.P.C. Proceedings and also the ACRs of the applicant for the relevant years. We have heard the learned counsel appearing for both the sides.
2. The applicant is working as Deputy Commissioner of Income Tax. He was appointed as Assistant Commissioner of Income Tax with effect from 20.11.1979 and was promoted to the Senior Time Scale from 1.11.1983. He was promoted as Deputy Commissioner of Income Tax in 1989. His grievance is that of not giving a proper placement in the order of promotion as per his seniority. It is stated that some of the private respondents who do not have the qualifying period of 5 years service in senior scale for being considered for promotion to the post of Deputy Commissioner have been considered and appointed. However, by relaxing the 1988 rules the qualifying service has been reduced and that is how the names of some of the private respondents came to be considered for promotion. It is alleged that no reasons were given for relaxation of the rules and further it is alleged that as required by the rules the UPSC has not been consulted. Hence the applicant is challenging the very relaxation of the rules and



consequently the eligibility of some of the private respondents for being considered for promotion to the post of Deputy Commission.

3. It is alleged that the applicant had through out performed his duties devoutly and he had no occasion to receive any adverse remarks at any time. He has been doing very good work and he has been chosen for posting in important places. The applicant had given best performance wherever he has worked. If, however, there is any downgrading of the applicant's ACRs they are not communicated to the applicant and the down-grading of the applicant cannot be considered for considering his promotion.

4. After amending the O.A., it is stated that applicant's seniority in the promotional post should be placed at Sl.No. 13 but he is given place at Sl.No. 114. It is stated that Respondents 9, 38 to 96, 102 and 103 were not in the zone of consideration at all, but they have been taken into zone of consideration by relaxing the rules. It is alleged that the DPC has not properly evaluated the service records of the applicant. That the relaxation of the rules in favour of the said private respondents is not sustainable in law. On these grounds the applicant has approached this Tribunal praying for his proper placement in the seniority list viz., at Sr.No.13 instead of Sl.No. 114.



5. The Respondents in reply have justified the relaxation of the rules on the ground of there being number of vacancies and suitable number of officers not being available. In the additional reply it is stated that when the DPC was held in March 1988 there were only 24 eligible officers as against 65 vacancies and even though the applicant who had not completed five years as on the date of DPC was considered in the DPC held in March 1988 as per the relaxed rules. But, however, since he was graded as 'Good' and there were sufficient officers with better gradings and having regard to the number of vacancies available then he was not included in the panel for promotion at that time. In the DPC held in March 1989 which is being challenged in the present O.A., there were 125 vacancies and only 68 officers had five years service who were eligible for consideration. In view of this disparity between the number of vacancies and the availability of the eligible officers, the rules were relaxed by the Government with the approval of the DOPT as well as UPSC. The applicant and other officers came to be promoted in the DPC held in March 1989. Since the applicant has grading of 'Good' and since there were number of officers with grading as 'Very Good' and 'Outstanding' they were placed above the applicant in the order of promotion due to better grading. Hence it is stated that the applicant has been given rightful place in the order of promotion and seniority, as per his grading.



6. At the time of arguments the learned counsel for the applicant pressed two points. The first is that many of the private respondents were not eligible to be considered but they have been considered by relaxing the rules without giving reasons and without consulting the UPSC. The second point pressed before us is that the applicant has through out a better performance and he has not been communicated any adverse remarks either regarding the adverse remarks or regarding down-grading him and therefore his grading as given by the DPC is not sustainable. On the other hand the learned counsel for the respondents maintained that rules have been relaxed due to want of sufficient number of eligible candidates and since number of vacancies were available the rules were relaxed for filling up the posts in the interest of administrative exigencies by consulting UPSC. On merits it was submitted that the applicant's ACRs were considered and he has been graded as 'Good' and therefore persons with better grading, though junior/s, have been placed above the applicant.

7. As far as merits are concerned, the argument of the learned counsel for the applicant is that there were no adverse remarks against the applicant and that he had a good record of service appears to be well founded. We have perused the ACRs of the applicant for the relevant years and find that they were extremely good. There are no adverse remarks in his ACRs. On the other hand the officers have given credit to the good work done by the applicant. The learned counsel for the applicant submitted that



even if there is good remarks still if there is down-grading of remarks from 'Excellent'/'Outstanding' to 'Very Good' or from 'Very Good' to 'Good' still the remarks will have to be communicated to the applicant and placed reliance on some authorities. He has also contended that even if there are good remarks, but still the grading for the Bench Mark is higher even then the remarks will have to be communicated to the officer though they may not be strictly adverse. He placed reliance on some authorities. In our view it is not necessary to consider these two arguments and the authorities relied on by the learned counsel for the applicant for the simple reason there is no down-grading of grades and further the applicant through out has a particular grading which is the Bench Mark for promotion to the post in question.

8. It is not disputed that the promotion from Assistant Commissioner to Deputy Commission is a selection post and it is not merely on seniority or seniority-cum-merit. It is purely selection process. In selection process zone of consideration is taken into account and the best amongst the zone of consideration will be selected. Zone of consideration is $2 x + 4$, here x refers to the number of vacancies. It is also not disputed and it is common ground that the DPC on the basis of ACRs will have to give grading to all the candidates who are within the zone of consideration. The gradings are 'Outstanding'; 'Very Good'; 'Good' and 'Un-Fit'. It is also not disputed and it cannot be disputed that after giving gradings while preparing the Panel for promotion

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officers who are graded 'Outstanding' will come first, followed by officers of 'Very Good' grading and following by officers with grading as 'Good'. In this process a senior officer who has got a grading as 'Good' will naturally go down below the junior officer who has obtained the grading as 'Outstanding' or 'Very Good'. In other words, in our view, in the process of selection by merit only, the junior officer will have a march over a senior subject to his grading.

9. One more thing we have to notice is that the Bench Mark for this particular post is 'Good'. We have seen the ACRs of the applicant for all the five years and found out that he has grading of 'Good' and above and therefore throughout he has the Bench Mark which is required for promotion. Hence the question of communicating any remark which may not be strictly adverse to a candidate if the grading is less than the Bench Mark does not arise since the applicant has the required Bench Mark in all the five years.

10. We have perused the ACRs of the applicant for the relevant years which was considered by the DPC and as could be seen the grading given by the highest officer viz., The Commissioner of Income Tax in the relevant ACRs are as follows:

1983-84	GOOD
1984-85	GOOD
1985-86	GOOD
1986-87	VERY GOOD
1987-88	VERY GOOD



11. It is, therefore, seen that applicant has Bench Mark 'Good' and more than Good in every year. There is no question of down-grading of the applicant from 'Very Good' to 'Good'. On the other hand it is the case of upgrading of three 'Goods' being followed by two 'Very Goods'. Therefore question of communicating any down-grading to the applicant also does not arise.

12. On the basis of the above gradings given in the ACRs in view of three Goods and two Very Goods, the DPC has given an over all grading of only "GOOD" to the applicant. It is a High Level Committee consisting of Member of the UPSC, who presided over the DPC meeting and the other two Members were senior officers viz., Chairman, Central Board of Direct Taxes and one Member of Central Board of Direct Taxes. It is such a high level DPC which has scrutinised the ACRs and on the basis of the service record has given overall grading as 'GOOD'. As pointed out by the Supreme Court in 1996(1) SLR 774 (SMT. NUTAN ARVIND Vs. UNION OF INDIA & ANOR) that when a High Level D.P.C. Committee has considered the merit of the respective candidates and assessed the grading and considered their cases for promotion, the Court cannot sit as an appellate authority over the assessment made by the D.P.C.

13. In the present case we have ourselves perused the ACRs and found out that there are only three Goods and two Ver Goods and in the average the D.P.C. has given grading as 'Good'. By any stretch of imagination we cannot ^{say} see that the over all gradation given by the D.P.C. is wrong or suffers from any



infirmity so as to call for interference by the interference by this Tribunal. The D.P.C. considered the cases of 138 officers. The findings of some of the officers were kept in sealed cover, presumably some inquiry might be pending against them. As for as other candidates are concerned some are graded as good, some as 'very Good' and some as 'Outstanding', and one or two as 'Unfit'. In the list of candidates assessed by the D.P.C. the applicant is at Sr.No. 29 and his grading is 'Good'. But since there were few candidates as 'Outstanding' and many candidates as 'Very Good' in the Panel for empanelment for promotion we find that the applicant has come down to Sl.No. 115. As already stated a junior will always march over a senior on the basis of grading particularly in promotion based on selection method. Since applicants place has come down only on the basis of grading, though he has good record of service. Probably he would have retained his original seniority or ^{would} when have come down only by a few places had his ACRs for all the years had been 'Very Good'. However, as the applicant has only three good and two very good reports and there being some officers who are very good and outstanding, the applicant has gone down in the empanelment. Hence we do not find any illegality or infirmity in showing the place of the applicant at Sl.No.115. in the empanelment and consequently in the order of promotion, and consequently at 114 in the order of promotion dated 10.4.1989. Therefore on merits the applicant's challenge to his place of seniority is not sustainable.



14. It is true that many of the officers who had not put in five years of service have been included in the zone of consideration of relaxation of rules. It is true that as per the 1988 Recruitment Rules five years minimum service in the senior grade was essential for being considered for next promotion. But Rule 15 of the 1988 rules clearly enables the Government to relax the rules. This is not disputed by the learned counsel for the applicant. His first ground of attack is that no grounds are given for relaxation of minimum service period of five years. In the reply itself the respondents have stated as to why the relaxation was given. It is clearly stated that there were number of posts of Deputy Commissioner but they did not have number of eligible officers to fill up those posts. In the first DPC held in March 1988 there were 55 vacancies, but available officers were only 24. It may be interesting to notice that in March, 1988 the applicant himself was not suitable to be considered for promotion since he did not have five years service in the selection grade. He was promoted to the selection grade on 1.11.1983, he would have completed five years on 1.11.1988 but in March 1988 when he has not completed five years. However, in view of the relaxation of the rules many of the officers were considered including the applicant in the selection DPC of March 1988, but the applicant did not get promotion since his grading was 'Good' and there were many officers who had higher grading as 'Very Good' or 'Outstanding'. It is interesting to notice that the



applicant has not challenged his supercession on the basis of March 1988 DPC proceedings. The next DPC was held in March 1989. Here the applicant has been promoted but only his ranking has come down in view of the grading, which we have already seen. Now he is contending that many of the junior officers are included in the zone of consideration though they did not have the minimum five years service in the senior scale. We have already seen how the applicant was considered for promotion in March, 1988 when he was not due as per the Recruitment Rules but he was included as per the relaxation of the rules. He cannot now turn round and say that the order of relaxation is bad. In 1989 there were 125 vacancies and there were no sufficient number of officers and therefore the rule has been relaxed by the respondents by reducing the minimum service required, which would be sufficient and good reason for relaxation of the Rules. The post of Deputy Commissioner of Income Tax is a responsible and important post. The Government might have thought that such post should not be kept vacant. Since no sufficient candidates with requisite service were available the rules have been relaxed bringing down the period of five years, the benefit of which the applicant himself had in March 1988 but unfortunately he did not get selected in that DPC. Therefore the rules were relaxed in March 1988 also. But now we are concerned with March 1989 DPC and the applicant himself had the benefit of the relaxed rules he cannot later challenge it on the ground that no reasons are given. The reasons given by the respondents in their reply, in our view, are sufficient and give reasons for relaxation of the minimum service period.

F.W.

15. The only other ground that as per Rule 15 of the Recruitment Rules the relaxation can be done in consultation with the UPSC and it has not been done in this case. In the reply the respondents have clearly stated that the rules were relaxed in consultation with the UPSC. There is always a presumption that all official acts have been done according to law.

16. We may also take notice that a Member of the UPSC himself is a Member of the D.P.C. and he presided over the D.P.C. meeting. This also leads to the inference that the rule must have been amended/relaxed in consultation with the UPSC or otherwise the UPSC Member who presided over the DPC meeting would have objected to the relaxation of the rules done without consulting the UPSC.

17. Even for a moment if it is accepted that there was no consultation with the UPSC still in our view consultation with UPSC mentioned in Rule 15 of the Recruitment Rules cannot be said to be mandatory. The Government has power to relax the rules. Consultation with UPSC is a procedural formality. This "formality" is only advisory and not binding on the Government. Even if the UPSC had objected for relaxing the rules, the Government would have the power still to relax the rules. We are fortified in our view by two decisions of the Supreme Court. In AIR 1989 SC 134 (DR. M.C. BINDAL Vs. R.G. SINGH) the facts of that case are not relevant for our purpose present purpose. In that case the UPSC had withdrawn its recommendation. Therefore, when the Government passed the order of appointment there was no recommendation.

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tion of the UPSC. The Supreme Court observed in para 12 of the reported judgement as follows:

"....It is, of course, a well settled legal position that the duty to consult the Commission in the matter of appointment to civil posts by the Government is not mandatory but directory and as such the absence of consultation with the State Public Service Commission does not render any appointment made by the Government in Civil posts invalid or illegal

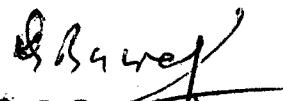
Another decision of the Apex Court directly on the point for relaxation of rules without consulting the Commission is the case of G.S. LAMBA & ORS Vs. UNION OF INDIA & ORS., 1985(1)SLR 687. In that case even the order of relaxation was not produced. The Supreme Court observed that no specific order is necessary for relaxing the rules and failure to record reasons will not invalidate the exercise of power. It is further observed consultation with Union Public Service Commission for relaxation of is not mandatory but is directory and non-consultation will not affect a decision of the Government in relaxing the rules.

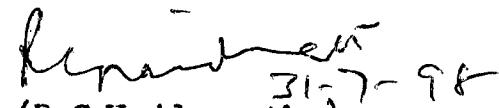
In view of the law declared by the Apex Court we hold that even if there was no consultation with the UPSC regarding relaxation of rules it would not invalidate the promotions made by relaxing the minimum service period in senior scale. But it is on record to suggest that there was a consultation with the UPSC and particularly when a Member of the UPSC himself presided over in the D.P.C.



18. In view of the above discussions we find that the applicant's case has been considered and he has been duly promoted but his ranking has come down due to gradation given by the D.P.C., which is based on proper assessment of ACRs. In our view the promotions made by the DPC are perfectly according to rules and fully justified and is based on record. No case is made out for interference with the ranking of the applicant in the order of promotion.

19. In the result, the application fails and it is hereby dismissed. In the circumstances of the case there would be no order as to costs.


(D.S. Baweja)
MEMBER (A)


31-7-98
(R.G. Vaidyanatha)
VICE CHAIRMAN