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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 736/91
Transfer Application No.

Date of Decision : 7.6.95

A.T. Brahmanale Petitioner

Mr. M.A. Mahalle Advocate for the
Petitioners

Versus

U.O.I. & Ors. Respondents

Mr. P.M. Pradhan Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S. Deshpande, V.C.

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? M

Answered

V.C.

trk

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A.NO. 736/91

Arun Tatoba Brahmanale ..Applicant

V/s

Chief Commissioner of
Income Tax & 23 ors. ..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

Hon. Shri P.P. Srivastava, Member (A)

Appearance:

Mr. M.A. Mahalle

Counsel for the applicant

Mr. P.M. Pradha

Counsel for respondents Nos. 1 & 2

ORAL JUDGMENT:

DATED: 7.6.95

(Per: M.S. Deshpande, Vice Chairman)

By this application the applicant seeks a direction to the respondents 1 and 2 to promote him as Income Tax Officer Group B (ITO Gr.B) w.e.f. 4.4.1989, that being the date from which his juniors were promoted by applying wrong criteria for promotion. The other prayers made in this application are not material in view of the view we are taking in this matter.

2. The applicant was working as Income Tax Inspector and promotions were to be made for the post of ITO Gr.B. His juniors were promoted upon the recommendation of

the DPC w.e.f. 4.4.89. Though the applicant's grievance is that he was not considered for promotion by the DPC, the record produced before us by the respondents nos.1 and 2 shows that the applicant was considered by the DPC on 29.3.89 and 10.4.90 and was found to be unfit. The DPC which met in April 91 and June 91 made the assessment with regard to the applicant but their findings were kept in sealed cover. The applicant made a representation on 29.5.91 raising several contentions but the only reply the applicant received from the respondent nos.1 and 2 was that the applicants name was considered by the DPC which met on 25.4.91 for promotion to the post of ITO which is made by selection-on-merit, and his case was duly considered by the DPC and hence there can be no case for any review or interference of the DPC's findings.

3. The applicant came to be chargesheeted under the provisions of the Prevention of Corruption Act by filing a case on 30.6.89 and that prosecution is still pending. The applicant's grievance is that the respondents did not apply the proper standard for considering his suitability for promotion and the general instructions regarding suspension which are to be found in Chapter III of Swamy's Compilation of CCS(CCA) Rules. Several instructions have been issued as to how the officers who are under cloud or under suspension have to be dealt with pending inquiry, or when disciplinary/criminal cases are pending and how a six

102

monthly review of sealed cover cases has to be done. Procedure has also been prescribed regarding ad hoc promotions. It is apparent that these provisions were not noticed by the respondents nos. 1 and 2 because of the pendency of the criminal prosecution against the applicant and though his assessment in 1989, 1990 was made openly later sealed cover procedure was adopted.

4. Shri Mahalle, Ld. counsel for the applicant, urged that the proper criteria for promotion to ITO Gr.B had not been applied and the promotion should have been on the basis of seniority-cum-fitness. The Ld. Counsel for the respondents Shri Pradhan fairly conceded before us that the promotion should have been based on seniority-cum-fitness and that the presumption of the respondents nos 1 and 2 as contained in letter dated 10.7.91, Annexure A, was incorrect. Since a wrong standard had been applied while ascertaining the fitness of the applicant for promotion it is necessary to quash the letter dated 10.7.1991, Exhibit A to the O.A. and the assessments made on that basis for considering the suitability of the applicant for promotion to the post of ITO Gr.B. It is not necessary for us at this stage to make any further directions except that the applicant's suitability for promotion as ITO Gr.B shall be considered on the basis that the test is seniority-cum-fitness and a review DPC shall be held for that purpose in respect of the years in which promotions of the applicant's juniors came to be made from and after 4.4.1989. A review DPC for this purpose shall be convened for determining the case of the applicant

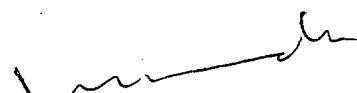
(B)

alone on the above criteria within four months and based on the assessment that would be made by the review DPC the respondents nos. 1 and 2 shall consider the reliefs which should be granted to the applicant regarding ad hoc promotion under the general instructions. The respondents shall follow the rules regarding adopting the sealed cover procedure, in view of the pendency of the criminal prosecution against the applicant. We issue no specific directions regarding how this should be dealt with but only say that any further entitlement of the applicant after the review DPC's assessment shall abide by the rules. With these directions the OA is disposed of with no order as to costs.



(P.P.Srivastava)

Member(A)



(M.S.Deshpande)

Vice Chairman

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