

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 954/92

Date of Decision: 18/8/98

B.G.Shinde

.. Applicant

Shri P.A.Prabhakaran

.. Advocate for
Applicant

-versus-

The Commissioner of I.T. & Ors.

.. Respondent(s)

Shri K.D.Kelkar.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

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

(1) To be referred to the Reporter or not ? *yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? *no*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.954 / 1992.

18th, this the Aug day of , 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

B.G.Shinde,
Income-tax Officer,
Ward 4(10),
P.M.T. Building,
Swar Gate,
Pune.

... Applicant.

(By Advocate Shri P.A.Prabhakaran)

V/s.

1. Commissioner of Income-tax,
Pune.
 2. Chief Commissioner of Income-tax,
Pune.
 3. Union Public Service Commission,
New Delhi.
 4. Central Board of Direct Taxes,
New Delhi.
- ... Respondents.

(By Advocate Shri K.D.Kelkar)

O R D E R

{Per Shri Justice R.G.Vaidyanatha, Vice-Chairman}

This is an application filed under section 19 of the Administrative Tribunals Act. The respondents have filed reply. We have heard Sh.P.A.Prabhakaran, learned counsel for the applicant and Shri K.D.Kelkar, learned counsel for the respondents.

2. The applicant at the relevant time was working as Income-tax Officer. He got his right to be considered for promotion for the first time in 1989. A charge sheet was issued to him in May, 1991. But the findings regarding the applicant's promotion was kept in sealed cover by the DPC which took place in December, 1988/ January, 1989 and subsequent DPCs. Due to this the

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applicant did not get his promotion though many of his juniors came to be promoted from January, 1989 and onwards. Since there was no charge sheet pending against the applicant on the respective dates of DPCs, the action of the respondents in keeping the findings in respect of the applicant in sealed cover is illegal. The applicant is therefore entitled to promotion from the date his junior came to be promoted. The applicant, therefore prays for a direction to the respondents to open the sealed covers and give effect to the recommendation of DPC and give him promotion from the date of recommendation of the DPC. He also prays for payment of arrears from the date of his promotion and proper placement in the seniority list and he also claims interest on arrears.

3. The respondents have admitted that findings of the DPC regarding applicant's promotion were kept in the sealed covers in the respective DPCs which were held from December, 1988 till December, 1991. It is admitted that charge sheet was issued on 16.5.1991. It is also stated that decision to initiate disciplinary proceedings had been taken earlier. The applicant's promotion was withheld in terms of the government circular regarding sealed cover procedure dt. 12.1.1988. Since the charge sheet is pending the applicant cannot ask for a direction to open the sealed covers and to give effect to the recommendation of the DPC. That the applicant is not entitled to any other reliefs.

4. In the light of the pleadings and the arguments addressed before us the points that fall for determination are:

- (1) Whether the applicant is entitled to get a direction for opening the sealed covers and for a direction to promote him on the basis of the recommendations of the DPC from the date of DPC meeting?
- (2) If point No.1 is answered in the affirmative whether applicant is entitled for proper placement in the seniority list?
- (3) If point No.1 is answered in the affirmative, whether the applicant is entitled to arrears of salary and allowances in the promotional post?
- (4) If point No.3 is answered in the affirmative, whether the applicant is entitled to interest on the said amount?
- (5) What order?

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Point No.1:

5. Admittedly, the first DPC was held in December, 1988/ January, 1989. Admittedly, the findings of the DPC regarding the applicant were kept in a sealed cover. It is also common ground that no charge sheet was pending against the applicant either for departmental enquiry or for a criminal case. It is also common ground that charge sheet was issued only on 16.5.1991. In view of these admitted facts, the question is whether the DPC was right in keeping its recommendation in a sealed cover. In our view, the answer should be in the negative.

In Union of India V/s. K.V.Jankiraman (AIR 1991 SC 2010) the Supreme Court has ruled that sealed cover procedure can be adopted only if a criminal case is pending or a charge sheet for a departmental enquiry is pending against a government official.

In Delhi Development Authority V/s. H.C.Khurana (1993 (3) SCC 196), the Supreme Court again referred to the 1988 Government Circular and held that sealed cover procedure can be adopted only if charge sheet is pending.

The learned counsel for the respondents relied on a decision of the Supreme Court in the case of Delhi Development Authority V/s. H.C.Khurana (1993(3) SCC 196) in support of his contention that sealed cover procedure can be adopted when decision is taken to initiate disciplinary action. But if we peruse the Judgment nowhere it is stated that the period of investigation or preliminary enquiry should be taken into account. That was a case where whether sealed cover procedure can be adopted after the issuance of charge sheet but before it was actually served on the delinquent. In fact in para 9 of the reported Judgment it is clearly mentioned that framing the charge sheet is the first step taken for initiating disciplinary proceedings. There is no observation in the Judgment that time taken prior to the charge sheet for preliminary enquiry or investigation should also be treated as time taken after taking a decision to initiate disciplinary proceedings. On the other hand, the point is made clear in Jankiraman's case that it is only after the issuance of charge sheet the sealed cover procedure can be adopted and not during preliminary enquiry or investigation. The learned counsel for the respondents submitted that some enquiry will have to be done and some investigation will have to be done before initiating either criminal case or departmental enquiry and therefore from the date of the preliminary enquiry it should be held that a decision has been taken by the

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authority to initiate disciplinary action and hence at that stage itself sealed cover procedure can be adopted. There is no merit in this argument in view of the law declared by the Apex Court in Jankiraman's case. Similar arguments were addressed in that case also. The Supreme Court rejected the same stating that in such a case the officer can be kept under suspension and the question of promotion will not arise at all. The Supreme Court has made it clear that pendency of departmental enquiry means only after the issuance of charge sheet.

6. Further more, the government itself has issued a memorandum dt. 31.7.1991 stating that in view of the judicial pronouncement a clarification is issued to open all sealed cover cases if charge sheet had not been issued prior to the DPC meeting. In this memorandum it is stated that sealed cover must be opened and benefit of DPC recommendation should be given from the date the officials immediate junior had been promoted.

Since in the present case the DPC meetings were held prior to the issuance of charge sheet, the procedure adopted by the several DPC meetings to keep the findings in sealed cover is clearly illegal and contrary to the government circular of 1988. Therefore, we hold that DPC should not have kept its recommendations in sealed covers and therefore, the sealed covers should be opened and the recommendation of the DPC should be given effect to. In case in any of the sealed cover the applicant has been shown as found fit for promotion then he should be promoted from the date his immediate junior came to be promoted. As seen from the respondents letter dt. 9.7.92

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(vide page 9 of the paper book) three DPCs were held prior to the issuance of charge sheet. We are not concerned with DPCs which were held subsequent to the issuance of charge sheet. Therefore, adopting sealed cover procedures in the DPC held in October, 1991 and December, 1991 is perfectly justified. We are only concerned with the DPCs held prior to 16.3.1991.

7. Suppose in the first DPC held in December, 1988/January, 1989, if the DPC has recommended the applicant for promotion then the applicant is entitled to get promotion from the date his immediate junior came to be promoted. For example in the first DPC the applicant was held to be not fit for promotion, however, if he is found to be fit for promotion in the second DPC held in January/February, 1990 or in the DPC held in March, 1991, we only say that the applicant should be given promotion from the date his nearest junior who got promotion in those DPCs. That means applicant should get seniority over his nearest junior who got promotion in any of the DPCs held prior to 16.5.1991. Point No.1 is answered accordingly.

Point No.2 :

8. In view of our finding on Point No.1, the applicant should get seniority in the proper place depending upon his promotion as per the guidelines given while discussing Point No.1.

Point No.3 :

9. We may place on record that applicant has since been promoted as Assistant Commissioner of Income-tax during the pendency of the O.A. We are told at the time of arguments that his promotion order was issued some time in the latter part of 1997.

According to the applicant his juniors came to be

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promoted from 1989 and onwards. He has made number of representations in this regard, but he came to this Tribunal only in 1992. According to the allegations in the application the applicant was first superceded for the promotion by some of his juniors in the order of promotion dt. 23.1.1989. At that stage itself the applicant got immediate cause of action to challenge his supercession and to ask for promotion from the same date when his junior came to be appointed. The subsequent promotional orders of juniors were issued on 22.3.1990, 27.3.1991, 8.11.1991 and 27.12.1991 as alleged in para 4.2 of the O.A. But this O.A. came to be filed on 4.9.1992. The period of limitation for approaching this Tribunal is one year from the date of cause of action. Therefore, we hold that though the applicant is entitled to retrospective promotion from the date his immediate or nearest junior came to be promoted as discussed in Point No.1, the applicant is entitled to actual monetary benefits restricted to one year prior to the date of filing the application. Since the application was filed on 4.9.1992, the applicant will be entitled to actual monetary benefits from 4.9.1991.

Point No.4 :

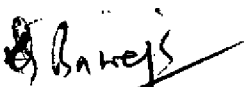
10. We are not impressed by the claim of the applicant for interest. It is well settled that one has a right to be considered for promotion, but not a right to get promotion itself. Here the respondents denied the promotion to the applicant by keeping the findings in sealed cover by their own interpretation of the Rule. It may be that in view of the law declared by the Supreme Court interpreting the Circular the procedure adopted by the DPC before issuance of a charge sheet has to be held to be illegal. That is why the government itself issued a subsequent memorandum on the basis of

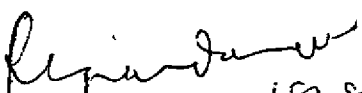
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judicial decisions which is dt. 31.7.1991 giving direction for opening sealed covers. Hence in these circumstances it is not a case for granting interest to the applicant on the arrears of pay and allowances.

11. In the result, the application is allowed partly as follows :

- (1) The respondents are directed to open the sealed covers of the DPCs held prior to 16.3.1991. If in any of the sealed covers the applicant has been found fit and recommended for promotion, then respondents are directed to accord promotion to the applicant as Assistant Commissioner of Income-tax from the date his immediate junior or nearest junior came to be promoted as Assistant Commissioner in any of the DPCs as per the observations in para 7.
- (2) In the light of the promotion which the applicant may get as a result of opening of the sealed cover, the applicant shall be given proper placement in the seniority list as observed in the order.
- (3) In case the applicant is found fit for promotion ~~and~~ then promote the applicant retrospectively as per the guidelines given in this order, then the applicant is entitled to notional promotion from the date his immediate or nearest junior came to be appointed as stated above and then he will be entitled to actual monetary benefits in the promotional post only from 4.9.1991 till he got his promotion during pendency of this O.A. some time in 1997.
- (4) The applicant's claim for interest is rejected.
- (5) The respondents are granted four months time from the date of receipt of this order to comply with the same.
- (6) In the circumstances of the case there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.
18/9/98

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 55/98 IN O.A. No. 954/92.

Dated the 9th day of October, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

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

Shri B. G. Shinde

... Review Petitioner.

Versus

Central Board of Direct
Taxes & Others.

... Respondents.

: ORDER ON CIRCULATION :

{ PER.: Shri R. G. Vaidyanatha, Vice-Chairman }

This is a review petition filed by the Original Applicant seeking review of our judgement dated 18.08.1998 in O.A. No. 954/92. We have perused the review petition and the entire materials on record.

2. The applicant wants by way of this review petition retrospective monetary benefits and also interest on the monetary benefits. We have considered this question in our judgement. We have given specific reasons ^{and} to why we are restricting the monetary benefits only to one year prior to the date of filing of the O.A. Therefore, reviewing the same does not arise.

As far as the claim of the applicant for interest on the arrears of monetary benefits is concerned, we have specifically considered the same and rejected the claim for interest. Therefore, again seeking review on the point does not arise.

3. It is well settled that the scope of review under Order 47 Rule 1 C.P.C. is very limited. It cannot be invoked as if a review petition is in the nature of an appeal against the order of a Court or Tribunal. If the applicant is aggrieved by the order of the Tribunal on merits, he may take appropriate legal steps by approaching higher forum. He cannot approach the same Tribunal by way of a review petition when the Tribunal has already considered the points and given its findings on merits. We, therefore, do not find any merit in the review petition.

4. In the result, the review petition is rejected by circulation.

S. Baweja
(D. S. BAWEJA)
MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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9/10/98
order/Judgement despatched
to Applicant/Respondent(s)
on 16/10/98

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