

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 985 OF 1992.

Date of Decision: July 29, 1999.

Ramesh Kumar,

Applicant

Shri P. A. Prabhakaran,

Advocate for
Applicant.

Versus

Union Of India & Others,

Respondent(s)

Shri V. G. Rege,

Advocate for
Respondent(s)

CORAM:

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

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

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

(2) Whether it needs to be circulated to other Benches of the Tribunal?

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 985 OF 1992

Dated the 29th day of July, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Ramesh Kumar,
Residing at -
Plot No. 14, Flat No. 340,
1st Floor, Sector-7,
Antop Hill, Bombay - 400 037.

Employed as
Assistant Commissioner of
Income-Tax under the control
of Chief Commissioner of Income-Tax,
Bombay City - 2, Bombay. ... Applicant

(By Advocate Shri P. A. Prabhakaran).

VERSUS

1. Chief Commissioner of Income-Tax
-(1), Bombay,
Aayakar Bhavan, M. K. Road,
Bombay - 400 020.
2. The Commissioner of Income-Tax
- I, Bombay City,
Aayakar Bhavan, M. K. Road,
Bombay - 400 020.
3. Central Board of Direct Taxes,
North Block, New Delhi through
its Secretary.
4. Union Of India,
Ministry of Finance,
Department of Revenue,
New Delhi through its Secretary.
5. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi through its Secretary.
6. Shri J. K. Kuriyan,
Chief Commissioner of Income-Tax,
Calcutta.

7. Chief Commissioner of Income-Tax-II,
Aayakar Bhavan, M. K. Road,
Bombay - 400 020.
8. Commissioner of Income-Tax (Appeal-II), M. K. Road,
Aayakar Bhavan,
Bombay - 400 020.
9. Shri G. S. Bhagia,
Commissioner of Income-Tax,
Secretary, Settlement
Commission (Income-Tax),
Aayakar Bhavan, M. K. Road,
Bombay - 400 020.
10. Shri R. K. Mishra,
Deputy Commissioner of
Income-Tax, working under
the Charge of Chief
Commissioner of Income-Tax,
Bombay.
11. Deputy Commissioner of
Income-Tax,
Range-13, A. K. Road,
Aayakar Bhavan,
Bombay - 400 020. ... Respondents.

(By Advocate Shri V. G. Rege).

O R D E R

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN.

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard the learned counsel appearing on both sides. The applicant's grievances in this application are two fold. His first grievance is about adverse remarks made in his A.C.R. for the year 1989-90. His second grievance is that he has not been given promotion to Senior scale. As far as the first grievance is concerned, his case is that he has been having a very thorough record of service but during the year 1989-90 adverse remarks

have been made about receiving complaints against the applicant regarding his work. The applicant's version is that during that year he had to undertake the assessment of tax of two noted film personalities, namely - Mr. Pramod Chakravorthy, a Film Director and Smt. Asha Bhosale, a famous singer of film songs. The administration noticed certain irregularities on the part of the applicant in the assessment of these two personalities. The applicant has his own explanation as to how and why these irregularities occurred. The applicant's explanation was called for by the Commissioner. Not being satisfied with the explanation given by the applicant, a notice was issued to him to be careful in future and then entries are made in the A.C.R. that complaints are received against the applicant about harassment of assesses. The applicant has joined issue on this point and has given a detailed version of his action so far as these two film personalities are concerned. Against the adverse remarks he made a representation to the higher officer which came to be rejected. He made one more memorial to the President of India which also has not been considered. Hence, he has approached this Tribunal for quashing the adverse remarks entered in the A.C.R. for 1989-90.

As far as non promotion is concerned, his case is that he had a very good record of service and many of his juniors were granted Junior Time Scale by superseding the case of the applicant. According to him, superseding him and promotion of his juniors was arbitrary and not based on proper scrutiny of the service records

and therefore he wants a direction to the department to reconsider his case for promotion in the year in question.

At this stage we may also notice that the applicant has since been promoted to the Junior Time Scale in 1993 but he wants the promotion from 01.10.1990 when some of the juniors got promotion to Senior Scale by order dated 03.04.1991.

2. The respondents in their reply have justified the adverse remarks made in the confidential report of the applicant for the year in question. They have given reasons for making such remarks and justified the remarks. As far as non promotion of the applicant is concerned, it is stated that during 1991 the applicant's case was examined by the D.P.C. but the findings were kept in a sealed cover since a vigilance case was pending against him. That is why the applicant was not considered for promotion in 1991. As far as 1991 is concerned, the D.P.C. considered the case of the applicant but on the basis of the service record came to the conclusion that the applicant was unfit for promotion and accordingly he was not given promotion but in 1993 the applicant has been given promotion to Senior Scale.

4. Now coming to the first grievance of the applicant, it is a question of two versions placed before us.

One is the version of the applicant giving some explanation about his conduct in assessment of the Income-Tax returns of Mr. Pramod Chakravorthy and Smt. Asha Bhosale. Then we have the version of the department as to the irregularities committed by the applicant in that connection. It is pointed out by the department that during the relevant year the applicant attached the Bank account of Mr. Pramod Chakravorthy which was not called for, since the funds of Mr. Pramod Chakravorthy was lying with the department and could have been adjusted towards the income-tax dues, if any. Then what is more, when the applicant went on leave, he had kept the penalty order ready. The applicant's explanation is, that he was not aware of the previous years returns of Mr. Pramod Chakravorthy and he did not know that surplus funds were available with the department belonging to Mr. Pramod Chakravorthy which could be adjusted towards his dues. He has also given his own version as to why and how the penalty order was kept ready. As far as Smt. Asha Bhosale is concerned, some irregularity is pointed out and for which again the applicant says that there was some bonafide mistake\$.

It appears the Chartered Accountant of these two Film personalities made a complaint to the higher officers about harassment by the applicant.


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In our view, this Tribunal is not sitting in appeal over the action taken by the administration in entering the adverse remarks in the A.C.Rs. The scope of judicial review is very limited. The administration has pointed out some irregularities on the part of the applicant and in a way the applicant admits the irregularities, though he gives his own explanation as to why it occurred. His immediate official superior has even issued a notice to applicant to be careful in future. Since we are not sitting in appeal over the entries in the C.Rs, we cannot go into the correctness or otherwise of the rival allegations. There was some material before the higher officer about complaints received against the applicant and the higher officer also found certain minor lapses on the part of the applicant in attending to the matter in question. If in those circumstances the higher officer had made some remarks, ^{which} cannot be said to be one without foundation or one without no evidence or one which is made arbitrarily so as to call for interference by exercising judicial review. Even if another view is possible, it is not a ground for interfering in a matter like this while exercising judicial review.

5. In addition to mentioning about the complaints, the adverse remarks also show that the Commissioner of Income-Tax (Appeal) has also pointed out that the quality of assessment was poor. We do not have the orders of assessment by the applicant before this Tribunal.

The Appellate Authority can always form an opinion about the quality of orders passed by a subordinate officer. If the Appellate Authority forms an opinion that the orders of assessment of the lower officer are not up to the mark or poor, there is nothing wrong in making entry in the A.C.Rs. This Tribunal cannot now call for the records and examine the assessment orders of the applicant and then decide whether the quality of assessment were poor or satisfactory or good. It is not the province of this Tribunal to sit in appeal over the orders in respect of assessments made by the concerned officer. There is no allegation, much less material to show that the opinion of the Commissioner of Income-Tax (Appeal) suffers from malafide. Hence, in these circumstances we do not find any material to disturb or interfere with the adverse remarks made against the applicant in the year 1989-90.

6. The Learned Counsel for the applicant relied on the case of State of U.P. V/s. Yamuna Shanker Misra & Another [1997 SCC (L&S) 903]. That was a case where the Supreme Court has made some general observations as to how the confidential reports should be prepared. One of the observations is that the officer must be given an opportunity of pointing out the defect in his work. In the present case, the competent authority has brought to the notice of the applicant the irregularities said to have been committed by him and his explanation was called and then only an entry is made in the confidential report. Therefore, in our view, the said decision is not applicable to the facts and circumstances of the present case.

7. As far as the applicant's non-promotion in the year 1992 is concerned, the D.P.C. proceedings are placed before us and we have perused the same. On the basis of the service records including the A.C.Rs., the D.P.C. has come to the conclusion that applicant was unfit for promotion during 1992. It might be that adverse remarks of 1989-90 might have come in the way of the applicant for getting promotion. It is also well settled that this Tribunal cannot sit in appeal over the findings of Departmental Promotion Committee. In this case, the Committee was at the highest level consisting of Chairman and Member of the Central Board of Direct Taxes, New Delhi. Since we do not find any irregularity or illegality in the procedure adopted by the D.P.C., we cannot interfere with the D.P.C. finding of the year 1992 that applicant was unfit for promotion.

8. Now coming to the applicant's claim for promotion for the year 1991, we have perused the copies of the D.P.C. proceedings. The D.P.C. meeting was held on 13th and 14th of March, 1991. 131 officers were considered for promotion to the senior scale. Most of the officers were found fit for promotion. Few officers were found unfit. Then the third category is about few officers including the applicant where it is mentioned that the D.P.C. findings are kept in sealed covers.

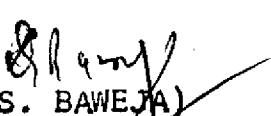
The applicant is at sl. no. 129 of the D.P.C. list. Then it is shown that his case is kept in a sealed cover. In the reply the respondents have stated that since some vigilance case was pending against the applicant, his case was kept in the sealed cover. There is nothing on record to show that any charge-sheet was issued against him for disciplinary enquiry. There is nothing to show that a criminal case was filed against the applicant. In the absence of any criminal case or pendency of departmental charge-sheet as on the date of D.P.C., applicant's case cannot be kept in a sealed cover as per the sealed cover procedure rules and the law declared by the Supreme Court in the case of Union Of India & Anr. V/s. K. V. Janakiraman reported in A.I.R. 1991 SC 2010. Since there is no allegation that either departmental charge-sheet was issued or criminal case was filed against the applicant as on the date of the D.P.C. or even subsequently, keeping the finding of the D.P.C. in a sealed cover was unwarranted. In view of this legal position, we have only to direct the administration to open the sealed cover and give effect to the D.P.C. recommendations. If the D.P.C. has recommended promotion of the applicant, then he must get promotion from the date his junior was promoted as per order dated 03.04.1991 with consequential benefits.

9. In the result, the application is allowed partly.



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The respondents are directed to open the sealed cover pertaining to the applicant as mentioned in the D.P.C. proceedings dated 13th and 14th March, 1991 and then give effect to the recommendations of the D.P.C. In case the D.P.C. has found the applicant 'fit' for promotion, then the applicant should be given retrospective promotion from the date his immediate junior got promotion as a result of the said D.P.C. proceedings and the applicant should be given all consequential monetary benefits from that date. In case the applicant was found unfit in the said D.P.C., nothing more need to be done except communicating the same to the applicant that he cannot be promoted in view of the findings of the D.P.C. All other prayers prayed for in the application are rejected. In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)

MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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