

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 213/92

Transfer Application No.

Date of Decision 3rd December 1997

M.D.Lahankar

Petitioner/s

Shri P.A.Prabhakaran

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri K.D.Kelkar

Advocate for
the Respondents

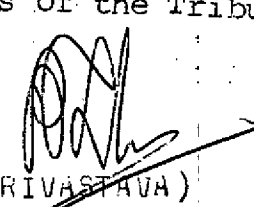
CORAM :

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

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 ?

Yes
No


(P.P.SRIVASTAVA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 213/92

Pronounced this the 3rd day of DECEMBER 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Manohar D.Lahankar,
Assistant Commissioner
of Income-tax, Circle I(1)
Aayakar Bhavan,
Tarabai Park, Kolhapur.

By Advocate Shri P.A.Prabhakaran ... Applicant

V/S.

1. Union of India through
the Secretary, Ministry of Finance,
Department of Revenue, New Delhi.
2. Central Board of Direct Taxes
through its Secretary,
North Block, New Delhi.
3. Union Public Service Commission
through its Secretary, Dholepur House,
Shahajahan Road, New Delhi.
4. Chief Commissioner of Income-tax,
Aayakar Bhavan, 12, Cannaught Road,
Pune.
5. Commissioner of Income-tax, "Vihar",
1146-E, Sykes Extension, Kolhapur.
6. Shri Jagdev, Deputy Commissioner of
Income-tax, C/o. Chief Commissioner
of Income-tax, West Bengal, Calcutta.
7. Shri Y.S.Rawat, Dy.Commissioner of
Income-tax, C/o Chief Commissioner
of Income-tax, Ayakar Bhavan,
M.K.Road, Mumbai-20.
8. Shri A.K.Kurapati, Dy.Commissioner
of Income-tax, C/o Chief Commissioner
of Income-tax, Ernakulam, Kerala.
9. Shri Buta Singh, Dy.Commissioner of
Income-tax, c/o Chief Commissioner
of Income-tax, Ahmedabad, Gujarat.

By Advocate Shri K.D.Kelkar

... Respondents

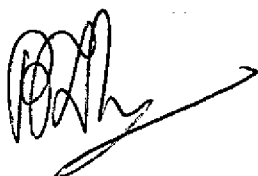


O R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicant is the Indian Revenue Service officer who joined as Assistant Commissioner of Income-tax in 1982. He was promoted to the senior scale of Assistant Commissioner of Income-tax in 1986. The applicant was considered for promotion to the next higher grade but was not promoted and the juniors to the applicant were promoted by order dated 27.11.1991 placed at Annexure-'A'. Aggrieved by the non-selection of the applicant for the post of Deputy Commissioner of Income-tax (Junior Administrative Grade) the applicant has approached this Tribunal.

2. The applicant has challenged the non-selection on the ground that through out his service, his record has been "Very Good" except in the year 1988-89 when certain remarks were communicated which have been treated as "Advisory" by the administration vide their letter dated 18.7.1990 placed at Annexure-'A-4'. Therefore, the applicant has argued that these remarks being advisory in nature could not come in the way of promotion of the applicant and therefore the applicant should have been selected for the post of Deputy Commissioner of Income-tax. Respondents have produced the Confidential Report File as well as the proceedings of the selection. It is seen from the record that the applicant has been assessed as "Good"



for the years from 1985-86 to 1988-89. The overall grading of the applicant is also "Good" in the selection and since there were certain officers who were assessed "Very Good", they have been placed on the panel and therefore it is seen that the Advisory remarks of the year 1988-89 has not come in the way of the selection of the applicant but it is the overall grading of the applicant which has been considered by the selection committee which has resulted into the applicant not been selected.

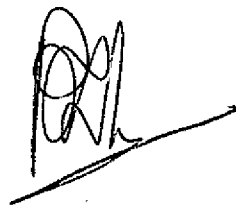
3. The applicant's learned counsel has argued that since for the post of Deputy Commissioner the criteria for selection is overall grading of "Very Good", therefore, the remark "Good" should be treated as adverse and if the applicant has received "Good" remarks, then these should have been communicated as these remarks have come in the way of the applicant's promotion. The learned counsel for the applicant has further argued that when something is adverse and comes in the way of promotion, then before it can be taken into account, it should be communicated to the candidate.

4. On this issue the learned counsel for the respondents has argued that the rules concerning communication of adverse remarks in the confidential report are very clear and only those remarks which are adverse are communicated and there is no provision under



rules to communicate "Good" remarks. The learned counsel for the respondents has also argued that the grading of the candidates is ultimately determined by the selection committee and therefore it would not be possible even otherwise to accept the argument of learned counsel for the applicant because in that case the remarks would have to be communicated after the selection committee has decided to give an overall grading to the applicant which is less than the grading required for selection.

5. After considering the arguments of both the learned counsels on this issue, we are of the view that in the absence of any rules envisaging communication of "Good" remarks when the grading for selection is "Very Good" is not provided under the rules. It also does not stand to reason, as the 'Bench Mark' would vary from post to post and it is not practical to convey to all those candidates who are not selected the remarks in their confidential report which resulted into their non-selection. We, therefore, do not agree with the argument of the learned counsel for the applicant that "Good" remarks are required to be communicated in case the 'Bench Mark' is "Very Good".



6. The ld. counsel for the applicant has also argued that the applicant is entitled to be placed in the select list even if his grading is "Good" as he belongs to Scheduled Caste in terms of para 6.3.2.(i) of Circular dated 10.4.1989. The para reads as under :-

"6.3.2.(i) In promotions by selections to posts/services within Group 'A' which carry an ultimate salary of Rs.5700/-p.m. in the revised scale, the SCs/STs officers, who are senior enough in the zone of consideration for promotion so as to be within the number of vacancies for which the select list has to be drawn up, would notwithstanding the prescription of 'benchmark' be included in that list provided they are not considered unfit for promotion."

The learned counsel for the applicant has argued that in terms of this para when the applicant is in the zone of consideration, he should have been automatically placed in the panel. On this issue, the learned counsel for the respondents has argued that the case of the applicant is not covered by the above provision. In this provision all those SC/ST officers who come in the seniority so as to be within the number of vacancies for which the selection has to be formed, will find place in the select list irrespective of the 'benchmark' provided they are not ^{unfit} for promotion. The respondents have brought out in Para 15 of their reply that there were 115 officers in the zone of consideration and the applicant was at Sr.No.103.



The DPC recommended a panel of 86 officers.

Therefore, the applicant would have been considered under the above rules only if his seniority was within 86.

7. Reading of this rule makes it clear that the protection is only available if the officer belonging to SC/ST is within the number of vacancies for which the select list has to be drawn up. Since in this case, the select list is only for 86 officers and the Sr.No. of the applicant is 103, therefore, the applicant's case cannot be covered by Para 6.3.2.(i).

8. The learned counsel for the applicant has also argued at the time of hearing that in this case the Member of the Selection Board did not consist of reserved category person as is required under the rules. The learned counsel for the respondents has argued that this plea has ^{not} been advanced by the applicant in his OA. and is being advanced at the time of argument and it is not a question of pure law but the question of facts are also involved.

9. The learned counsel for the respondents has also argued that in the grade of Junior Administrative Grade, there is no reservation provided.

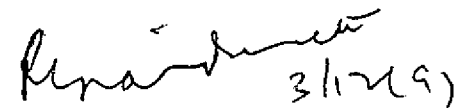


10. After hearing both the counsels on this issue, we are of the view that the applicant cannot raise this issue at this stage as this is the question as to who were the Members of the Members of selection committee and whether reserved community candidate is required to be Member of the Committee. We are inclined to agree with the learned counsel for the respondents that the applicant cannot raise this issue first time at the time of argument when the plea has not been taken by the applicant in the OA. or in the rejoinder.

11. We, therefore, do not find any merit in the challenge of the applicant to his non-selection to the post of Deputy Commissioner of Income-tax. The OA. is, therefore, dismissed with no orders as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.