

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.932/93.

Dated: 10.8.1999.

Deolal Harichand Khangar

Applicant.

Mr. P.A.Prabhakaran,

Advocate for  
Applicant.

Versus

Union of India & Ors. Respondent(s)

Mr.K.D.Kelkar,

Advocate for  
Respondent(s)

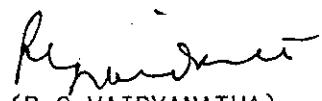
CORAM :

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

Hon'ble Shri B.N.Bahadur, 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)  
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 932/93

Tuesday, this the 10th day of August, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,  
Hon'ble Shri B.N.Bahadur, Member(A),

Deolal Harichand Khangar,  
114, Shani Peth,  
Lidhurwada,  
At Post, Tal. Jalgaon,  
Pin - 425 001. ....Applicant  
(By Advocate Mr.P.A.Prabhakaran)  
Vs.

1. The Chief of Income-tax,  
Sadhu Vaswani Marg,  
Pune.
2. Commissioner of Income-tax,  
Nasik, Kendriya Rajaswa Bhavan,  
Gadkari Chowk, Old Agra Road,  
Nasik.
3. Dy. Commissioner of Income-tax,  
Range-II, Bhikamchand Jain Market,  
Jalgaon,  
Pin : 425 001.
4. Income-tax Officer,  
Ward 2(4), Jalgaon,  
Bhikamchand Jain Market,  
Jalgaon - 425 001. ....Respondents
5. M.L.Naik
6. V.K.Kulkarni
7. V.V.Sargar
8. K.G.Kutty
9. M.I.Mulla
10. M.H.Garware
11. S.R.Kulkarni
12. B.C.Belgaonkar
13. S.V.Kulkarni
14. S.B.Shriwastava
15. B.S.Wankhede
16. S.V.Ahire
17. R.P.Kamble,  
(All Respondents from Sl.No.5 to  
17 are ITOs working in the charge  
of Respondent No.1).

(By Advocate Mr.K.D.Kelkar for Official  
Respondents).

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

In this application, the applicant applicant is  
challenging adverse remarks made against him for the year 1991-92

...2.

and his non-selection for promotion during 1993 when some of his juniors came to be promoted. The respondents have filed reply opposing the application. We have heard the learned counsels appearing on both sides.

2. The applicant's case is that for the year 1991-92, though he had done very good work he received communication of adverse remarks. Then, he made a representation against that adverse remarks to the Competent Authority, but the representation came to be rejected by the letter dt. 14.8.1992. The applicant has given number of reasons to say that his work was quite satisfactory during that period and the adverse remarks that his work was 'inadequate' was not correct. He has also challenged his non-selection for promotion during that year, presumably this was done on the basis of the adverse remarks for the year 1991-92. He has also stated that during that year he had to work under different officers and at different wards and this has not been taken into consideration while writing the ACRs. He, therefore, wants that the adverse remarks for the year 1991-92 should be quashed and the respondents should be directed to re-consider his case for promotion in the year 1993. He has alleged in the OA that he has not worked for more than 3 months under the Officer who has written adverse entry against him.

3. The respondents in their reply have denied the allegation that the applicant had not worked for more than three months under the officer who made the adverse entries. It is stated that the Competent Officer has made necessary entries in the ACR from the work carried out by the applicant during that year. That the applicant was given the recovery work mainly during 1991-92 and the concerned officer has found that the work was

inadequate. In view of the adverse remarks in the ACRs, the applicant was not approved for promotion by the DPC. No grounds are made out either for interfering with the adverse remarks or about giving direction regarding promotion.

4. After hearing both the counsels and perusing the materials on record we find that for the year 1991-92, the main adverse remarks against the applicant is that his work was 'inadequate' so far as recovery is concerned. The ITO under whom the applicant was working has made the remarks and the remarks has been approved by the Reviewing Officer viz. the Dy. Commissioner of Income-tax. Then, the applicant made a representation to higher officer viz. the Commissioner of Income-tax who has gone through the record and has made a note in the file that after considering the entire materials, he finds that there is no merit in the representation and accordingly representation is rejected and communicated to the applicant as per letter dt. 14.8.1992.

5. The contention of the applicant that he had not worked for more than three months under the concerned ITO Mr.Suryavanshi is not correct in view of the facts admitted in the OA itself. The applicant has given the necessary details of his work during that year in para 4.3 of the OA. It is seen from the entries therein that the applicant had worked for more than three months under Mr.Suryavanshi in Ward No.2(5) and he has further worked under Mr.Suryavanshi during the same year in different ward viz. Ward No.2(4). Therefore, Mr.Suryavanshi was competent to write the ACRs in respect of the applicant for that year. On the basis of the recoveries made, the ITO has come to the conclusion, that the work done by the applicant was inadequate, which has been

confirmed by the Dy. Commissioner and the representation has been rejected by the Commissioner of Income-tax. It is well settled that in a matter like this, the Tribunal cannot sit in appeal over the action of the Competent Officer in making entries in the ACRs. The scope of judicial review is very limited. Since the Officer has applied his mind and made the entries which has been approved by the higher officer and still higher officer has considered the representation of the applicant, we cannot now sit in appeal and find out whether the work of the applicant was satisfactory or not, adequate or not etc. After going through the records, we do not find any illegality or irregularity in the adverse entries made against the applicant for the year in question. Therefore, we are not inclined to interfere with the adverse entries made against the applicant for the year 1991-92.

6. As far as the question of promotion is concerned, the learned counsel for the respondents has placed before us the ACRs for the relevant years and also DPC proceedings. The DPC proceedings was held on 14.7.1993 has considered many officers including the applicant. They have found some officers fit for promotion, some were found unfit and the findings of some officers were kept in 'sealed cover'. The DPC has taken into consideration the ACRs of all the Officers. As far as the applicant is concerned, his name is at Sl.No.17 and the DPC has found him 'unfit' for promotion. It is also well settled that the Tribunal cannot sit in appeal over the findings of the DPC on a matter like this. If the DPC has acted contrary to law and dehors the rules or if there is mala fide intention then only this Tribunal can interfere with the matter. It is not shown that the proceedings of the DPC were contrary to rules or any

member of the DPC acted malafide as against the applicant. Therefore, we cannot interfere with the findings of the DPC.

The learned counsel for the applicant invited our attention to V.R.Nair's case reported in (1989 (9)ATC 396). On a perusal of the Judgment, we find that the same is not bearing on the point under consideration and is distinguishable on facts.

7. In view of the above discussion, we hold that the applicant is not entitled to any of the reliefs prayed for. At this stage, we may place on record that the applicant has since been promoted by order dt. 16.6.1994.

8. In the result, the application fails and is dismissed. No order as to costs.

B.N.Bahadur

(B.N.BAHADUR)

MEMBER(A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)

VICE-CHAIRMAN

B.