

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 168/94

Date of Decision:

Shri Beni Ram Durgaprasad Uikey Applicant.

Shri P.A. Prabhakaran, Advocate for
Applicant.

Versus

Union of India and others Respondent(s)

Shri V.D. Vadhavkar for
Shri M.F. Aethra - Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice K.M. Agarwal, Chairman

Hon'ble Shri. R.K. Ahooja, Member (A)

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

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

(R.K. Ahooja)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESOT ROAD, MUMBAI:1

Original Application No. 168/94

the 25/6 day of June 1999.

CORAM: Hon'ble Shri Justice K.M. Agarwal, Chairman

Hon'ble Shri R.K. Aahooja Member (A).

Beni Ram Durgaprasad Uikev
501, Bldg. No.4
Neelam Nagar,
Mulund (E)
Bombay.

... Applicant.

By Advocate Shri P.A. Prabhakaran.

V/s.

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Union Public Service
Commission, through
The Secretary,
Dhoppur House,
New Delhi.
3. Central Board of Direct
Taxes, through its
Secretary, North Block,
New Delhi.
4. Ramesh Chandra Singmura
C/o Respondent No.3
5. Barune Minj,
C/o Respondent No.3
6. Surat Singh
C/o Respondent No.3. ... Respondents.

By Advocate Shri V.D. Vadhavkar for Shri M.I. Sethna.

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(Per Shri R.K. Ahooja, Member (A))

The applicant was working as an Income Tax Officer in Bombay when the charge-sheet containing two articles of charges was issued to him on 5.4.1989. Inquiry Officer found that while article 'I' was proved and article 'II' had not been proved. Thereafter the Commissioner of Income Tax passed an order dated 22.9.1992 imposing the penalty of reduction of pay scale from Rs. 2750/- in the pay scale of Rs. 2000-60-2300-EB-75-3200 to the stage of Rs. 2675/- upto 31.1.1994; and his pay shall be raised to Rs. 2900/- with effect from 1.2.1994 and thereafter. The applicant submits that on 14.6.1993, a promotion order was issued, whereby some of his juniors who are impleaded as respondents No. 4, 5, and 6 were promoted as Assistant Commissioner of Income Tax, overlooking his claim. The applicant states that he has been over-looked only because the DPC was under the mis-apprehension that he had been awarded a major penalty and was also still under suspension. He also alleges that the DPC did not consider his case properly as he belongs to a Schedule Caste community and the instructions with regard to Schedule Caste and Schedule Tribe officers provide that unless a SC/ST candidate is found unfit he cannot be refused promotion.

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2. The respondents in their reply have stated that the applicant has also been promoted as Assistant Commissioner of Income Tax with effect from 1.2.1994 and his seniority has been fixed between respondent No. 5 and 6. They point out that the post of Assistant Commissioner of Income Tax has to be filled in by the selection process. In the DPC meeting held in June 1993 ~~four officers~~ belonging to ST category including the present applicant were considered in the extended zone of consideration. The applicant came under serial No.205 and he was assessed by the DPC as 'Good' and on this grading he was included in the panel at serial No.99. Respondent No.6 was also graded as 'Good' and being junior to the applicant, was placed below him at serial No.100. However respondent No.4 and 5 who were at serial No.207 and 208 respectively were graded as 'Very Good' and on that grading they were placed above the applicant. As regards the apprehension of the applicant that he was not promoted on account of the penalty imposed on him, the respondents say that as per the instructions on the subject even where the DPC considers that despite the penalty the officer is suitable for promotion, it is provided that he should not actually be promoted during the currency of the penalty. Since the penalty was only upto 31.1.1994 he was promoted with effect from 1.2.1994.

3. We have heard the counsels. Shri P.A. Prabhakaran, counsel for the applicant argued that since the applicant has been promoted, his grievance is confined to preponement of his date of promotion from 1.2.1994 to 14.6.1993. He has submitted that the penalty imposed on the applicant is a minor penalty and the instructions quoted by the respondents regarding with-holding of the promotion during the currency of penalty are related only to major penalty. In this connection he has cited the judgement of this Tribunal in S.K. Malik V/s. Union of India and others 1992 (19) ATC 490.

4. We have perused the order of the Tribunal in the case of S.K. Malik V/s. Union of India (supre) In that case the applicant was charge sheeted on 13.5.1985 and after completion of enquiry, the Competent Authority imposed the penalty of reduction of pay in the time scale of two stages for a period of two years without postponing his future increments. The final appeal and disposal of the memorial to the President came on 25.4.1991. By that time they had amended the Rule 11 of CCS(CCA) Rules, whereby the penalty of reduction in pay in the time scale of two stages came to be classified as minor penalty. Relying on an earlier judgement of Chandigarh Bench it was held that withholding of promotion on the ground of minor penalty cannot be allowed as it would amount to double jeopardy. On that footing the

application was allowed and a direction was given to constitute a Review DPC to consider the case of the applicant.

5. The present case of the applicant is that in fact he was found suitable for promotion by the DPC which was held in June 1993. This was despite the imposition of the aforesaid penalty. Nevertheless the recommendation for promotion was not given effect to on the plea of currency of the penalty upto 31.1.1994. The penalty imposed was for reduction in two stages with cumulative effect. Even though the order of the Disciplinary Authority stated that it was a major penalty, in fact it was a minor penalty in terms of the amended Rule 11 of the CCS(CCA) Rules.

6. By notification dated 13.7.1990, the penalty of reduction to lower stage for a period had come to the classification as a minor penalty. Therefore in the ratio of the aforesaid judgement of the Tribunal in the case of S.K. Malik (Supra) the promotion of the applicant cannot be withheld on the ground that penalty had still to run for some more time.

7. In the light of the above discussion we are of the view that the prayer of the applicant for preponing his promotion is justified. We are however not inclined to consider the second prayer that the decision of the DPC should be reviewed.

8. In the result the O.A. is partly allowed. The respondents are directed to propose applicant's promotion as Assistant Commissioner of Income Tax from the date his junior\$ in the select list was promoted. However this will be only for notional purposes and he will be entitled to his pay as Assistant Commissioner only from 1.3.1994 as otherwise his promotion will in effect nullify the order of penalty. The applicant will however be entitled to future increments as Assistant Commissioner of Income Tax on the basis that he was promoted on the earlier date in 1993. No order as to costs.

R.K. Ahooga
(R.K. Ahooga)
Member (A)

K.M. Agarwal
(K.M. Agarwal)
Chairman

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