

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 909/97

Date of Decision : 27<sup>th</sup> May 2002

S.A.Hirlekar \_\_\_\_\_ Applicant

Shri P.A.Prabhakaran \_\_\_\_\_ Advocate for the  
Applicant.

VERSUS

Union of India & Ors. \_\_\_\_\_ Respondents

Shri V.D.Vadhavkar for  
Shri M.I.Sethna \_\_\_\_\_ Advocate for the  
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other No  
Benches of the Tribunal ?

(iii) Library yes

P.S.Jain  
(S.L.JAIN)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.909/97

Dated this the 27<sup>th</sup> day of May 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

Suhas Anant Hirlekar,  
R/o 16-B/301, Eskay Apartments,  
Sai Baba Nagar, Borivali (West),  
Mumbai.

...Applicant

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India  
through The Chief Commissioner  
of Income Tax, 3rd Floor,  
Aayakar Bhavan, M.K.Road,  
Mumbai.

2. The Commissioner of Income Tax  
Mumbai City - I, 3rd Floor,  
Aayakar Bhavan, M.K.Road,  
Mumbai.

3. The Dy.Commissioner of Income Tax,  
Computer Operations - I,  
Regional Computer Centre,  
Bandra Kurla Complex,  
Bandra (East),  
Mumbai.

...Respondents

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

..2/-

*S. Vadhavkar*

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that DPCs held for promotion of Head Clerk on 28.9.1995 and Inspector on 9.5.1996 and 19.6.1997 is irregular with a direction to the respondents to hold the review DPC, consider the case of the applicant ignoring the ACR for 1994-95 and the penalty of "Censure", promote the applicant as Head Clerk w.e.f. 28.9.1995 and Inspector of Income Tax w.e.f. 9.5.1996 when his juniors were so promoted with all consequential benefits including seniority, pay fixation, arrears of pay along with cost.

2. On perusal of Para 1 of the OA. which is particulars of the order against which the application is made, it is clear that the application is against the letter No.DC (HQ) Pers/S.A.H. 96 dated 3.7.1997 intimating that the applicant was not found fit for promotion as Inspector by the DPC (Ex-'A') and thereby rejected his representation dated 24.6.1997 (Ex-'AA') against supercession by the juniors to the applicant as Inspector of Income Tax. On perusal of letter dated 24.6.1997 (Ex-'AA' OA. page 17), the grievance of the applicant relates to promotion of 36 officials to the post of Inspector vide order No.DC(HQ)/Personnel/153-6/97 which pertains to DPC dated 19.6.1997. As such, when this representation has been rejected vide order dated 3.7.1997 (Ex-'A'), the respondents have decided the case of the applicant only in respect of DPC dated 19.6.1997.

P.L.J. ..3/-

3. The applicant while seeking the relief in OA. has enlarged the scope of his agitation relating to promotion of Head Clerk on 28.9.1995 and Inspector on 9.5.1996. It is worth mentioning that the applicant had not even represented against the promotion of Head Clerk vide DPC dated 28.9.1995. The relief sought by the applicant in this respect is also barred by limitation in view of the fact that the applicant has filed this OA. on 7.8.1997 beyond the period of one year prescribed under Section 21 of the Administrative Tribunals Act, 1985. In respect of his grievance for promotion to the post of Inspector of Income Tax on 9.5.1996, as stated above, the applicant has not challenged the said order in Para 1 of the OA. even not represented against the same. Hence, he is not entitled to raise his grievance in respect of DPC held on 9.5.1996 which is also barred by limitation in view of period of one year prescribed by the Administrative Tribunals Act, 1985. In the result, we confine our decision only in respect of DPC held on 19.6.1997.

4. In para 12 of the written statement the respondents have stated that though Censure penalty period expired and also the CRs of consecutive five years beginning from 1991-92 to 1995-96 showed a 'Good' remark as far as evaluation of his work is concerned, his name was not considered for Inspector's promotion at the discretion of DPC members after taking into account his

behaviour and evaluation of his CR in the light of sequence of events narrated in the minutes of the meeting of the DPC (a note regarding this is annexed to the Minutes of the same DPC). Though the CRs were 'Good' the DPC which made evaluation of the CRs. took decision that since Inspector's post is filled on 'Selection-cum-merit' basis, he was 'Unfit' for holding a post to which officials are to be promoted on the basis of 'selection-cum-merit.

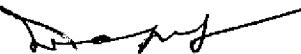
5. The respondents have also placed before us the record of DPC dated 12.6.1997 and on perusal of the same, we find that even after the representation of the applicant in respect of his Annual Confidential Report for the year 1994-95 the adverse remarks were treated as 'Advisory'. The DPC stated that "this view taken by the accepting authority is not consistent". When adverse 'remarks which on representation have been treated as advisory, the view taken by the DPC or the reasoning of the DPC cannot be upheld.

6. Censure is the penalty which was awarded on 29.3.1996 while the DPC met on 12.6.1997 took into consideration the circumstances in which the penalty of Censure was awarded. We do not find any error in respect of taking the said circumstances into consideration.

PL 8711

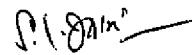
7. After considering the DPC finding, we are of the considered view that though the Tribunal does not sit as an appellate authority over the decision of the DPC but certainly the Tribunal has power to take into consideration how the DPC reached to a conclusion and the procedure adopted in reaching to the said conclusion is warranted by law or not can be examined by the Tribunal. As such we are of the considered opinion that the DPC took into consideration the said fact which ought not to have taken into consideration. As such, the reasoning and the conclusion arrived by the DPC cannot be said to be in accordance with law.

8. In the result, we direct the respondents to convene a review DPC for the applicant for his promotion to the post of Inspector of Income Tax as on 12.6.1997. If the DPC comes to a conclusion that the applicant is fit for promotion to the post of Inspector of Income Tax, the applicant who has already been promoted w.e.f. 31.7.1998, be promoted w.e.f. 19.6.1997 with all consequential benefits. No order as to costs.



(S.K.AGARWAL)

MEMBER (A)



(S.L.JAIN)

MEMBER (J)

mrj.

27/5/97

~~to applicant/respondent(s)~~  
24/6/97

W