

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 24/11/2001

OA 14/2000

Nand Lal Parihar, Joint Commissioner of Income Tax (Audit), Rajasthan, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Chairman, Central Board of Direct Taxes, North Block, New Delhi.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.R.N.Mathur

For the Respondents

... Mr.N.K.Jain

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

Applicant of this OA has been promoted as Deputy Commissioner of Income Tax w.e.f. 27.12.89 vide order dated 23.8.96 (Ann.A/3). This order was passed by the respondents in pursuance of this Tribunal's order dated 18.1.96 in OA 444/94. Plea of the applicant is that this promotion should have been given effect to from April, 1987 and he seeks direction to the respondents to this effect, and also for all consequential benefits.

2. In the brief background of the case, the applicant has stated that on a charge-sheet issued to him on 2.9.86, a penalty of withholding of increments for five years, without cumulative effect, was imposed upon him. He challenged the said penalty by filing OA 444/94, which was decided by this Tribunal on 18.1.96. By this order, the Tribunal quashed and set aside the order of penalty and directed the respondents to reconsider the case of the applicant for promotion to the higher post on the basis of records available at the time the DPC was held in April, 1987 and in the subsequent years. Plea of the applicant is that the entire case of disciplinary proceedings had arisen out of mala fides on the part of Shri G.C.Agarwal, who had also entered adverse remarks in the ACR of the applicant for the year 1984-85, when the applicant was holding the post of ITO, A-Ward, Pali

District, Pali. The applicant contends that the promotion order dated 23.8.96 is not in conformity with the orders of this Tribunal as the respondents were obliged to reconvene the DPC which was held in the year 1987 and the same has not been done. The respondents have merely opened the sealed cover containing the result of the case of the applicant which considered his name for promotion in the year 1989 and after opening the sealed cover he has been given promotion w.e.f. 27.12.89. His claim is that the officer junior to him, one Shri J.R. Paroliya, was promoted on the post of Deputy Commissioner of Income Tax in April, 1987 and in that view the applicant was also entitled to be promoted from April, 1987 alongwith his batchmates. One of the grounds on which the applicant has built up his case is that in his ACR for the year 1984-85 adverse remarks were entered by Shri G.C. Agarwal, who was biased against him and because of such an ACR his promotion from the year 1987 has been denied.

3. The respondents, in their written reply, have stated that the applicant was considered for promotion to the grade of DCTI (now JCTI) for the first time by the DPC held in the year 1986 and by the subsequent DPCs held in March, 1988, March, 1989 and December, 1989. The recommendations in his case were everytime kept in the 'sealed cover' for want of vigilance clearance. In compliance of the directions of this Tribunal, the sealed covers were opened and it was found that only in the DPC held in December, 1989 the applicant was considered fit for promotion to the grade of DCIT (now JCIT) and his name was placed above Shri Rajpal Singh, his immediate junior. Thus, the respondents contend that they have fully complied with the directions of the Tribunal and the applicant has been given his due placement and all consequential benefits. The respondents have also raised preliminary objection on the ground of limitation saying that this OA is directed against the order dated 23.8.96 (Ann.A/3) and thus there is a delay of almost four years in filing this application. It is admitted by the respondents that the applicant had submitted representation dated 26.7.99, which was disposed of by order dated 5.10.99. The respondents contend that such a delayed representation and its disposal does not give any cause of action in favour of the applicant.

4. While discussing the procedure followed by the DPC, it has been stated by the respondents that on each occasion five years' ACRs were considered by the DPC and on the basis of the relevant five years' ACRs



the applicant was earlier not found fit for promotion by the DPCs held in December, 1986, March, 1988 and March, 1989. He was found fit for promotion only by the DPC held in December, 1989 and was placed above his immediate junior Shri Rajpal Singh.

5. In the rejoinder filed by the applicant, he has challenged the action of the respondents because of the reason that after orders of the Tribunal in OA 444/94 the DPC should have reconvened, which has not been done, and also that the applicant's case was not considered for promotion by the DPC held in April, 1987, when his other batchmates were considered. The applicant contends that this has been a denial of opportunity to him for which the respondents owe an explanation.

6. We have heard the learned counsel for the parties and perused the entire records including the DPC proceedings which have been placed before us for our perusal. In view of the facts before us, we have proceeded to examine the controversy to understand whether the same has been hit by the principle of res-judicata, and/or the same is barred by limitation; and also on merits whether this is maintainable.

7. Learned counsel for the applicant submitted that the focus of his argument was that the orders of the Tribunal dated 18.1.96, passed in OA 444/94, have not been correctly implemented by the department. On our seeking clarification, the learned counsel stated that the applicant chose not to file a Contempt petition but instead preferred a representation to the department that he was entitled to be promoted w.e.f. April, 1987 as against the date of 27.12.89, as indicated in the order dated 23.8.96. Applicant's representation having been rejected by order dated 5.10.99 (Ann.A/1), he has filed this OA. On the point of limitation, the learned counsel stated that the final order in this case has been passed by the department only on 5.10.99 and from that view the OA is very much within time, as provided for under Section 21 of the Administrative Tribunals Act, 1985.

8. On the point of res-judicata, the learned counsel presented the view that the earlier OA was against the order of imposition of penalty and consideration of the request of the applicant for promotion w.e.f. April, 1987 was only a consequence of quashing the penalty order. His plea was that the relief in the earlier OA was mainly for quashing the penalty and thus it cannot be said that the present OA is hit by res-judicata. The learned counsel vehemently argued that orders of the

Tribunal in OA 444/94 have not been faithfully and duly implemented by the respondents inasmuch as the applicant has only been promoted w.e.f. December, 1989 instead of April, 1987. He has been shown to have been placed above Shri Rajpal Singh who, the learned counsel submitted, was an officer of 1981 batch, whereas the applicant was of 1978 batch and should have been considered for promotion alongwith his own batchmates. He submitted that in his own batch one Shri J.R. Baroliya was the next junior, who was promoted in April, 1987. As an obvious consequence, the applicant also should have been promoted w.e.f. April, 1987 and that would only be a proper compliance of this Tribunal's order.

9. Learned counsel for the respondents raised objection on the point of limitation stating that the applicant had submitted a representation three years after the date of the promotion order of which he alleges to be aggrieved. Mere disposal of such representation, the learned counsel contended, could not revive the cause of action in favour of the applicant. The learned counsel also asserted that the entire argument of the applicant that he was considered by the DPC held in April, 1987, is totally misconceived as no DPC was held at all in April, 1987. Applicant's candidature was duly considered by all the DPCs right from 1986 onwards to December, 1989. It was only in December, 1989 that the applicant was found fit for promotion and in the earlier DPCs he was not considered fit for promotion based on his ACRs, though of course his name was everytime kept in sealed cover because of ongoing departmental proceedings.

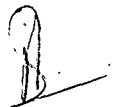
10. We find from the records and the submissions made before us that the order of the Tribunal in OA 444/94 was passed on 18.1.96 and in compliance of the same an order dated 23.8.96 was issued, by which the applicant was promoted w.e.f. 27.12.89. In our considered view, this is the final order by which the applicant's case has been finally decided for his promotion to the post of DCIT. If the applicant felt that this order was not in strict compliance of the orders passed by the Tribunal, it was open to him to challenge the action of the respondents by filing a Contempt Petition, which obviously he did not do. It is a very weak ground for him today to explain away his own inaction by stating that he chose to make a representation to the department instead of filing a Contempt petition. This representation was submitted by him only on 26.7.99 i.e. almost three years after the date of the order of his promotion. Filing a delayed representation and its disposal by the department with nothing material being brought on



record except reiterating the order already passed, does not provide a fresh ground of action to the applicant. As has been held by the Central Administrative Tribunal, Madras Bench, in the case of V.S. Raghavan v. Secretary, Ministry of Defence, (1987) 3 ATC 602, a departmental representation made years after accrual of the cause of action cannot stop limitation. In our view, accepting such a plea that the representation submitted a number of years after the accrual of the cause of action could again revive such a cause of action would be totally counter to the spirit of the provisions under Section 21 of the Administrative Tribunals Act, 1985. We are convinced that this OA is barred by limitation as the cause of action arose to the applicant only on 23.8.96. Mere fact that he decided to file representation three years after this order and the disposal of such a representation will not revive any cause of action.

11. We have perused the copy of OA 444/94 and we find from the relief clause that one of the prayers of the applicant was that the respondents may be directed to give promotion to the applicant on the post of Deputy Commissioner of Income Tax w.e.f. April, 1987. The same prayer has been made by the applicant in the present OA. Obviously, this is hit by the principle of res-judicata as held in the case of Captain S.C.Gulati v. Union of India, 1998 (1) ATJ Allahabad 242.

12. We have also examined the case on its merits. The DPC proceedings for the year 1986 onwards have been placed before us and we find that every time from 1986 to December, 1989 name of the applicant was duly considered by the DPC and everytime kept in the sealed cover. As stated by the respondents, in the DPCs held in December, 1986, March, 1988 and March, 1989 the applicant was not considered fit because of the ACRs and he was declared fit for promotion for the first time only in December, 1989. In view of these facts, we do not find any infirmity in the action of the respondents in promoting the applicant only w.e.f. December, 1989. Plea of the applicant that he was not cosidered alongwith his batchmates is not borne by the facts available in the proceedings of the DPC. The Plea that his immediate junior is Shri J.R.Baroliya and not Shri Rajpal Singh is not the issue before us as the applicant has not challenged his seniority position vis-a-vis Shri Rajpal Singh and it is not for us to comment on this fact, though it would appear that because the applicant having not been considered fit by the DPCs of 1986, March, 1988 and March, 1989 he would have lost in seniority as all those considered fit including his



betchmates and his juniors would have stolen a march above him in the meanwhile. In view of the discussion aforesaid, we do not find any merit in this case and this OA is liable to be rejected on grounds of limitation, res-judicata as also on merits.

13. We, therefore, dismiss this OA on grounds of limitation, res-judicata and also on merits. No order as to costs.

Chand
(A.P.NAGRATH)

MEMBER (A)

S. Agarwal
(S.K.AGARWAL)

MEMBER (J)