

28/03/2012

OA No. 64/2009

Mr. N. S. Rajawat, Counsel for applicant.

Mr. Praveen Jain, Counsel for respondent Nos. 1 to 3.

None present for respondent Nos. 4 to 6.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar  
[Anil Kumar]  
Member (A)

K. S. Rathore  
[Justice K. S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 28<sup>th</sup> day of March, 2012

Original Application No.64/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Parmanand Khandelwal  
s/o late Shri Kanhaiya Lal Khandelwal,  
r/o 75/134, Shipra Path, Mansarovar,  
Jaipur,  
Senior Tax Assistant,  
O/o DGIT (INV), Rajasthan, Jaipur

.. Applicant

(By Advocate: Shri N.S.Rajawat)

Versus

1. Union of India  
Through Chief Commissioner of Income Tax,  
Jaipur Central Revenue Building,  
Statue Circle,  
Jaipur
2. The Commissioner of Income Tax (I),  
Central Revenue Building,  
Statue Circle, Jaipur
3. The Director General of Income Tax (Inv.),  
Rajasthan, Jaipur Central Revenue Building,  
Statue Circle,  
Jaipur

4. Shri Kanwal Kapoor,  
Assistant Valuer,  
Valuation cell,  
Office of the Commissioner of Income Tax (I),  
Central Revenue Building,  
Statue Circle,  
Jaipur
5. Shri Rajesh Mittal,  
Superintending Engineer,  
Office of the Commissioner of Income Tax,  
Jaipur, Central Revenue Building,  
Statue Circle, Jaipur
6. Shri Sudhir Kumar Soni,  
Office Superintendent,  
Office of the Additional Commissioner of Income Tax,  
Range-3, Jaipur Central Revenue Building,  
Statue Circle, Jaipur

.. Respondents

(By Advocate: Shri Gaurav Jain for resp. No. 1 to 3)

ORDER (ORAL)

By way of this OA, the applicant prayed for the following reliefs:-

“(i) the application of the applicant may kindly be accepted and the so called adverse remarks communicated vide letter No. CIT-I/ITO (Hqrs) JPR/ACR/2008-09/691 dated 31.07.2008/06.08.2008 Annexure A-2 in respect of columns No. 14, 21(1) and 21(2) of ACR for the year 2005-06 be expunged.

(ii) Letter No. DGIT (Inv.) JPR/Parmanand/ACR/2008-09/704 dated 24.11.2008 Annexure A-3 and letter No. CC/Addl.CIT (Hq) JPR/2008/543 dated 20.11.2008 Annexure A3A be quashed.



(iii) The respondents be directed to promote the applicant to the post of office superintendent from 05.10.2007 when his junior Shri Sudhir Kumar Soni was promoted on the post of the Office Superintendent and the applicant be placed senior to Shri Sudhir kumar Soni in the seniority list of the Office Superintendent.

(iv) All consequential benefits with effect from 5.10.2007 be awarded to the applicant.

(v) Any other order or direction deemed just and proper in the facts and circumstances of the case may kindly be passed.

2. The short controversy involved in this OA is regarding below benchmark/adverse remarks. The grievance of the applicant is that he was not considered for promotion to the post of Office Superintendent whereas persons junior to him have been given promotion.

3. Vide Ann.A/1 dated 14.8.2007 entries made in the ACR for the year 2005-06 were communicated to the applicant and the assessment 'inadequate' was considered to be adverse. The applicant submitted representation against the adverse remarks and after having considered the same by the respondents, the remarks made earlier were revised vide Ann.A/2 dated 31.7.2008, which are reproduced as under:-

Sl.No.	Original remarks	Modified Remarks of Reporting & Reviewing Officer	Revised remarks
12(2)	Below Average	Inadequate	Good
14	Below Average	Inadequate	Inadequate

16	Below Average	Inadequate	Not applicable
18	Average	Inadequate	Not applicable
19	Average	Inadequate	Good
21(1)	Below Average	Inadequate	Inadequate
21(2)	Below Average	Inadequate	Inadequate
22	Average	Inadequate	Good
23	Average	Inadequate	Good
26	Average	Inadequate	Good

4. Thereafter the applicant preferred a petition for expunction of adverse remarks and the same was also considered and rejected upholding the revised remarks given vide Ann.A/2 dated 31.7.2008.

5. It is not disputed that the Director General Income Tax had communicated rejection of the petition of the applicant by the Chief Commissioner of Income Tax, Jaipur who has considered his petition for expunction of adverse remarks. It is also not disputed that the DPC held on 27.9.2007 for the recruitment year 2007-08 considered the name of the applicant for promotion to the post of Office Superintendent but decided to defer his case as the competent authority i.e. Commissioner of Income Tax-I had not decided representation of the applicant for expunction of adverse remarks for the year 2005-2006. A review DPC was held on 12.8.2008. The review DPC held for the post of Office Superintendent for the recruitment year 2007-08, considered the case of the applicant in the light of the rules on the subject, was of the view that the applicant was unfit for promotion to the cadre of Office Superintendent because overall remarks in column 23 and 26 in the ACR of the applicant has been categorized as 'Good' and in column No. 14, 21(1) and (2) had been categorized as 'Inadequate'. The case



of the applicant was considered by the DPCs held for promotion on the post of Office Superintendent from time to time but he was not found suitable in view of Rule 49(e), which thus reads:-

“49(e). The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that sometimes the overall grading in ACR may be inconsistent with the grading under various parameters or attributes.”


6. Having heard the rival submissions of the respective parties and after perusal of the material available on record, in our considered view, the respondents have thoroughly considered the case of the applicant. The respondents have denied the allegation that the respondents were annoyed with the applicant. Not only this, the case of the applicant is considered thoroughly and while considering the case of the applicant they have also considered the fact that there were number of complaints against the applicant and the applicant's working was never found satisfactory and the superior officers always rated the applicant below average and inadequate.


7. Looking to the performance of the applicant and the overall assessment of ACR by the DPC, the applicant was not found suitable, as is evident by the order dated 31.7.2008 (Ann.A/2) and as such, we are not satisfied with the submissions made on behalf of the applicant. The action of the respondents is just, legal and in



accordance with the provisions of law and no illegality has been committed by the official respondents in adjudging suitability of the applicant for promotion, which requires no interference by this Tribunal.

8. Consequently, the OA being bereft of merit fails, which is hereby dismissed with no order as to costs.

  
(ANIL KUMAR)  
Admv. Member

  
(JUSTICE K.S.RATHORE)  
Judl. Member

R/