

**Central Administrative Tribunal
Principal Bench**

OA No. 3604/2015

Order reserved on: 22.04.2016
Order pronounced on: 12.05.2016

Hon'ble Mr. V. N. Gaur, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Dinesh Singh
S/o Sh. Sheo Prasad Singh
DOB:18.09.1966
Age 49 years,R/o B-402,
AyakarVihar, Vaijalpur,
Near ShyamalChaar Rasta,
Ahmedabad,Gujarat.
Working as Addl. CIT (ITAT)-1(2),
Ahmedabad, Gujarat.

- Applicant

(By Advocate: Sh. R.N.Singh)

Versus

1. Union of India
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001
(Through its Secretary)
2. Central Board of Direct Taxes
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001
(Through its Chairman)
3. Ms. Minakshi J. Goswami,
(DOB: 26.03.971),
Civil code No.94050
Working as Commissioner of Income Tax
(Respondent No.3 to be served through
the respondents no.2 herein)

- Respondents

(By Advocate: Sh. Rajeev Kumar)

ORDER

Hon'ble Mr. V.N.Gaur, Member (A)

The present OA has been filed with the following prayer:

“(a) Call for the original file(s)/record(s) of the respondents vis-à-vis the DPC proceedings/screening proceedings and the file(s) leading to the impugned orders;

(b) Declare the Order No.171 of 2015 issued vide F.No. A-32011/2/2014-Ad.VI dated 16.09.2015 (Annexure-A Impugned) to the extent the same does not contain the name of the applicant herein as illegal, arbitrary and discriminatory and non est in the eyes of law;

(c) Declare that the applicant is entitled for being given the promotion to the grade of Commissioner of Income Tax w.e.f. 16.9.2015, i.e., when the respondent No.3 has been promoted vide order dated 16.9.2015 (Annexure-A-Impugned) with all consequential benefits viz., arrears of pay, seniority in the grade, etc. to issue the order of promotion to the applicant from the date his immediate junior has been promoted and also to accord him all consequential benefits;

(d) Award cost of this application and proceedings against the Respondents No.1 & 2 and favour of the Applicant.

(e) May also pass further order(s) as be deemed just and proper to meet the ends of justice.”

2. The applicant is an officer of Indian Revenue Service (Income Tax) of 1994 batch presently working in the grade of Addl. Commissioner of Income Tax w.e.f. 01.01.2007. The grievance of the applicant is that the respondents have issued an order on 16.09.2015 promoting 129 officers of the grade of Addl. Commissioner/Addl. Director of Income Tax to the grade of Commissioner of Income Tax (CIT) in which the name of respondent no.3, who is junior to the applicant, appears at Sl.

No.124 but the name of the applicant is missing. According to the applicant he fulfils all the eligibility conditions for promotion to the grade of Commissioner of Income Tax and the APARs of the applicant for the relevant years meet the prescribed benchmark. Further he is neither facing any criminal case/disciplinary proceeding nor is under suspension.

3. Learned counsel for the applicant submitted that in the counter reply filed by the respondents it has been stated that the respondents have obtained the first stage advice of CVC for initiation of major penalty proceedings against the officer, and therefore, the case of the applicant for promotion has been put on hold. According to the learned counsel the existing instructions issued by the DOP&T on 14.09.1992 provides that at the time of consideration of promotion of a Government servant the following category of cases should be specifically brought to the notice of the Departmental Promotion Committee (DPC). These are

- (i) Government servants under suspension
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and
- (iii) Government servants in respect of whom prosecution for criminal charge is pending.

4. Only in these cases the finding of the DPC can be kept in sealed cover. In the consolidated instructions issued on 02.11.2012 this position has been reiterated and it has been

stated that withholding of vigilance clearance to a Government servant who does not fulfil these conditions may not be legally tenable in view of the procedure laid down in the OM dated 14.09.1992. The applicant, as of now, is neither under suspension nor has any chargesheet been issued to him in a departmental proceeding or criminal prosecution. The respondents have, therefore, acted illegally in denying the promotion to the applicant. He relied on the case of **Union of India etc. vs. K.V.Jankiraman etc.**, AIR 1991 SC 2010.

5. Learned counsel for the respondents admitted that at the time of holding of the DPC the applicant was not facing any criminal case or disciplinary proceeding. He was also not under suspension. The Principal, Director General of Income Tax [DGIT] (Vigilance) had also not withheld the vigilance clearance of the applicant as his case did not fall in any of the category of DOP&T OM dated 14.09.1992 mentioned earlier. Only when the recommendations of DPC were submitted to ACC for approval, the ACC desired to know the latest status of the complaint pending against the applicant. At that stage a letter dated 20.07.2015 was received from Ministry of Home Affairs whereby it was informed that they have received first stage advice for initiating major penalty proceedings against the officer. The respondents have approached the MHA to get the certified copies of the listed documents, statement of witnesses (with their addresses) and

factual report on the article of charge, so that action may be initiated against the officer. These documents are still awaited from the MHA.

6. We have heard the learned counsels and perused the record. It is an admitted position of the respondents that at the time of holding DPC the DGIT (Vigilance) had accorded vigilance clearance and there was no disciplinary case pending against the applicant. In para 4 (viii) and (ix) of the counter reply it has been categorically stated that the case of the applicant did not fall under any one of the three categories mentioned in DOP&T OM dated 14.09.1992. After a query raised by the ACC, the official respondents got in touch with the MHA who informed them that the first stage advice of CVC had been obtained for initiating major penalty proceedings against the officer. It is not clear as to how in respect of an officer of Indian Revenue Service working under respondents no.1 & 2, the CVC advice was obtained by MHA. However, leaving it at that, the fact of the situation is that the respondents have not moved beyond that stage and issued any charge sheet, or are taking any action that would come within the ambit of the three categories mentioned in DOP&T OM dated 14.09.1992. Therefore, there is no ground on which the promotion of the applicant could have been kept in abeyance. The respondents have admitted that the applicant was considered fit for promotion, and that some complaints on which CVC advice

was obtained by MHA, came to their notice only after a query from the ACC. In our view, pending complaint or an intention to initiate major penalty proceeding against an officer is not sufficient ground to deny him promotion.

7. In the face of these facts and the judgment of Hon'ble Supreme Court in K.V.Jankiraman (supra), the OA is allowed. The respondents are directed to promote the applicant from the date on which his immediate his junior was promoted. The applicant will be entitled to all consequential benefits. These directions may be complied with within a period of six weeks from the date of receipt of a copy of this order. No costs.

(Raj Vir Sharma)
Member (J)

(V.N. Gaur)
Member (A)

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