

**Central Administrative Tribunal
Principal Bench**

OA No.3252/2017

New Delhi, this the 16th day of November, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Shri Manoj Kumar Gautam
Aged about 54 years,
S/o Late Badri Prasad Gautam
R/o Ground Floor, Aayakar Bhawan,
Near Holy Cross High School Cantt.,
Aurangabad, Maharashtra
presently working as Commissioner of
Income Tax under CBDT. Applicant.

(By Advocate, Shri S. K. Gupta)

Vs.

Union of India through

1. Secretary
Department of Revenue
Ministry of Finance
North Block,
New Delhi.
2. Establishment Officer (ACC)
Department of Personnel & Training
North Block, New Delhi.
3. Chairman
Central Board of Direct Taxes
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
4. Pr. Director General of Income Tax (Vig)
1st Floor, Dayal Singh Library
1, Deen Dayal Upadhyay Marg,
New Delhi.

5. Secretary
 Union Public Service Commission
 Dholpur House,
 Shahjahan Road,
 New Delhi. ... Respondents.

(By Advocate, Shri Manjeet Singh Reen)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

The applicant was appointed as Assistant Commissioner of Income Tax after qualifying the All India Civil Service Examination conducted by UPSC, and joined the Central Board of Direct Taxes (CBDT) on 16.12.1987. He earned promotions from time to time and became Commissioner of Income Tax in the year 2008 and joined the Post of Commissioner of Income Tax in Delhi on 04.08.2008. It is stated that the applicant has all "Outstanding" gradings during the entire period as Commissioner of Income Tax. In para 4.3 of the OA, the applicant has prepared a tabular chart giving the gradings which are from 8.2 to 9.6 in different years as Commissioner of Income Tax. It is further mentioned that the applicant has never been served with any statutory charge sheet or show cause notice, nor he was placed under suspension.

2. In 2014-2015, DPCs were held for promotion to the post of Principal Commissioner of Income Tax. In its meetings held on 30.04.2014 and 01.05.2015 applicant was also considered but persons

senior to the applicant as Commissioner up to the IRS Civil Code No.87061 were promoted. The Code of the applicant is 87078. Another DPC meeting was held on 07.06.2017 and the applicant was considered for promotion. A promotion order dated 16.08.2017 was issued promoting various officers from the post of Commissioner of Income Tax to Principal Commissioner of Income Tax. It is stated that juniors to the applicant with IRS Code No.87079 and others have been promoted to the post of Principal Commissioner of Income Tax, and even various officers of 1988 batch have been promoted vide the aforesaid order. The applicant served a legal notice dated 19.08.2017 to the respondents. Accordingly, this Application has been filed seeking following reliefs:-

- “(i) the inaction on the part of the respondents in not promoting the applicant to the post of Pr. Commissioner of Income Tax and promoting the juniors may be set aside;
- (ii) direct the respondents to consider and promote the applicant to the post of Pr. Commissioner of Income Tax and promotion be given effect at par with his juniors with all consequential benefits like salary, seniority etc.;
- (iii) may also pass any further order (s), direction (s) as be deemed just and proper to meet the ends of justice.”

3. Since the reasons for non promotion of the applicant were not communicated, while issuing notice, respondents were directed to file short affidavit indicating reasons for non consideration of the applicant.

4. A counter affidavit has been filed on behalf of the respondents. In para 3 thereof, it is stated that the stand of the applicant that he was not considered for promotion is wrong. It is mentioned that he was duly considered by the DPC for promotion to the post of Principal Commissioner of Income Tax along with his batchmates for the vacancies for the years 2014-2015 and 2015-2016 by the DPC convened on 07.06.2017 by UPSC. The DPC found the applicant fit for promotion to the grade of Principal Commissioner of Income Tax for the vacancy year 2015-2016. It is further mentioned that the proposal for obtaining approval of Appointments Committee of Cabinet (ACC) to the recommendations of DPC dated 07.06.2016 was sent to the DoP&T for empanelment of the officers in the panel recommended by the DPC as the promotion to the post of SAG and above can only be granted after obtaining approval from ACC. It is also stated in para 5 that the DoP&T vide communication dated 02.08.2017 conveyed the approval of ACC to the recommendations of the DPC. However, the ACC has deferred decision on empanelment to the grade of Principal CIT in respect of the applicant and 4 others till a final view on the pending complaints against them is taken. Regarding the vigilance clearance, it is stated in para 4.4 of para wise reply that vigilance clearance was granted to the applicant vide letter dated 09.08.2017, and it was also conveyed that one complaint is

pending against the officer in which file is put up to Chairman, CBDT on 26.07.2017 for seeking approval to send report to the CVC with the recommendation for initiation of major penalty proceedings against the officer. Except the above averments, there is nothing in the counter affidavit that the applicant was facing any criminal prosecution or disciplinary proceedings when his case for promotion to the post of Principal Commissioner of Income Tax was considered by the DPC.

5. We have heard learned counsel for the parties at length.

6. The case of the applicant is squarely covered by the provisions contained in DoP&T Office Memorandum No.22011/4/91-Estt.(A) dated 14.09.1992 which came to be issued pursuant to the judgment of Hon'ble Supreme Court in *Union of India etc. vs. K. V. Jankiraman etc.* [(1991) 4 SCC 109]. In Para 2 of the aforesaid office memorandum, following three circumstances have been mentioned to deny promotion to a government servant:-

- “(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 a criminal charge is pending.”

Para 7 of the aforesaid memorandum reads as under:-

"7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also."

In case of the applicant none of the three conditions, as mentioned under the 1992 Memorandum existed when his case was considered for promotion by the DPC held on 07.06.2017.

7. The aforesaid memorandum was, however, superseded by another Office Memorandum dated 02.11.2012. In the memorandum dated 02.11.2012, the policy decision taken in 1992 memorandum was reiterated. Para 12 of the same reads as under:-

"12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/criminal court case against a Government servant, if the three conditions mentioned in para 2 of this Department's O.M. dated 14.09.1992 are not satisfied. The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. If the charges against a Government servant are grave enough and whom Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings."

It is also noticed in 2012 memorandum that promotion cannot be withheld merely on the basis of suspicion or doubt or where the matter is under preliminary investigation and has not reached the

stage of issue of charge sheet etc. This view has been held by this Tribunal in case of *Ashok Kumar vs. UOI & Ors.* [OA No.4141/2015 decided on 16.01.2017] whereby the following directions were issued:-

“8. In this view of the matter, this OA is allowed. Respondents are directed to implement the recommendations of DPC dated 05.06.2015. The applicant shall be entitled to notional promotion to the post of Commissioner of Income Tax from the date of his juniors, namely, Satpal Singh and B. Venkataswara Rao were promoted, and financial benefit from the date of actual promotion. He will also be entitled to seniority on the promotional post over and above his juniors. Let the entire exercise be completed within a period of three months from the date of receipt of copy of this order. No costs.”

8. In view of the settled legal position, action of the respondents in withholding promotion of the applicant despite the applicant having been found fit by the DPC is not sustainable in law. This Application is accordingly allowed. Respondents are directed to implement the recommendations of the DPC dated 07.06.2017, and promote the applicant with effect from the date persons junior to him were promoted retaining his seniority, within a period of one month from the date of receipt of copy of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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