

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH : BANGALORE**

ORIGINAL APPLICATION No. 170/00328/2017

TODAY, THIS THE 13<sup>th</sup> DAY OF AUGUST, 2018

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER  
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

Smt. Lakshmi Hande Puri, IRS  
Aged about 57 years,  
W/o Mr. Rajdeep Singh Puri,  
Commissioner of Income Tax,  
&  
Principal Commissioner of Income Tax (Addl. Charge),  
O/o. The Commissioner of Income Tax (Audit) – 1,  
301, Aayakar Bhavan,  
M.K. Road, Mumbai – 400 020

... Applicant.

(By Advocate Shri Janekere C. Krishna)

Vs.

1. Union of India,  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi  
Represented by its Secretary Revenue

2. Central Board of Direct Taxes,  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi  
Represented by its Chairperson.

3. Union Public Service Commission  
Dholpur House,  
Shahjan Road,  
New Delhi – 110 069

... Respondents.

(By Advocates Shri V.N. Holla, Counsel for respondents No. 1 & 2 and  
Shri Zulfikir Kumar Shafi, Counsel for respondent No.3)

**ORDER**

**Hon'ble Shri Dinesh Sharma, Administrative Member**

The facts of the case, in brief, are as follows :

2. The applicant, an IRS officer of 1985 batch, was not found fit for consideration for the post of Principal Commissioner of Income Tax (PCIT) by the Departmental Promotion Committee meeting held on 30.04.2014 and 01.05.2014 (hereinafter referred to as the DPC meeting of 2014). The applicant filed O.A. No.138/2015 before this Tribunal against this. The Tribunal, while giving liberty to the applicant to pursue relief in this or any other forum of her choice, disposed of the OA by giving a direction to the concerned authority to write her APAR for the relevant year. Despite compliance of this order by writing the APAR for the year 2011-12, the issue was not resolved since the reason for her rejection was found to be the below bench mark APAR of 2005-06. Pursuant to the liberty granted in O.A. No.138 of 2015, the applicant again came before this Tribunal requesting for having her name considered for appointment as PCIT. During the pendency of this O.A, the applicant who was not considered fit for promotion for vacancy year 2013-14 and 2014-15 was subsequently, on 7.6.2017, finally cleared for promotion to the post of PCIT against vacancy year 2015-16, and was given promotion vide order dated 16.8.2017. The applicant requested for amendment of her O.A and asked for the relief of declaring the DPC Proceedings of 2014 as bad in law, for promoting her as PCIT retrospectively with effect from 30.01.2015, and for all consequential benefits. The request for amendment of O.A was allowed.

3. The respondents have denied the claims of the applicant in their replies to the original and the amended O.A. They have stated that the DPC meetings of 2014 did not consider the case of the applicant because she had not fulfilled the required bench mark of having at least 5 APARs above “very good” level. Her APAR for 2005-06 (considered in lieu of APAR for 2009-10) was “good” and thus below the bench mark for consideration. The APAR was conveyed to her before the DPC meeting was held and her representation against it was not found satisfactory to change her grading. The respondents raised the question of jurisdiction of this Tribunal since the applicant was presently not posted within Karnataka. The respondents also raised the issue of non-impleadment of 264 Commissioners of IT/Directors of IT who will be adversely affected by the retrospective relief claimed in the amended O.A. The applicant requested for substituted service to all affected parties by publication in prominent newspapers which was allowed by this Tribunal and complied with by the applicant. However, none requested for impleading or filed any reply following this publication.

4. On the issue of jurisdiction, according to the respondents, the cause of action arose in New Delhi and as per Rule 6 of the CAT (Procedure) Rules, 1987, an application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction –

- (i) the applicant is posted for the time being, or
- (ii) the cause of action , wholly or in part, has arisen.

We find that the cause of action arose when the DPC Meeting of 2014 failed to consider her case for promotion. At that time, she was posted at Mangalore. She had initiated her complaint against this cause of action before this Tribunal. The present application is against the same cause of action and is in continuation of the same pursuit for relief. It is certainly not the intention of the Rules that an applicant should keep on moving his/her application for the same relief with every change in his/her place of posting. Thus, we do not think that there is any violation of provisions regarding territorial jurisdiction while adjudicating this matter.

5. The crux of the relief sought by the applicant in this O.A, as allowed to be amended as per orders of this Tribunal dated 17.11.2017, is to declare her promotion to the post of Principal Commissioner of Income Tax retrospectively with effect from 30.1.2015 and to direct the respondents to consider her for the post of Chief Commissioner of Income Tax (CCIT), if found fit. The main ground for seeking this relief (which also happens to be the main ground by the respondents for denying this relief) is the non-consideration of her candidature by the DPC meeting of 2014. The applicant has contested this decision on the following grounds :

(1) The APAR of 2005-06 need not have been considered since the meeting was held in 2014 by which time APARs of later years were available;

(2) Not writing APARs in some of the intervening periods and misplacing them (2011-12) was not her fault and she should not have been punished for that;

(3) The “good” APAR of 2005-06 was not communicated to her within a reasonable time (violation of Supreme Court decision in 2008 8 SCC 725). Even when it was communicated to her, very late in 2013, her representation against it was wrongly rejected.

(4) The period for which the APAR of 2005-06 is written is less than 90 days and, therefore, it is in violation of DoPT Office Memorandum dated 16.01.2006 (Annexure A-15).

6. The respondents have countered these grounds by saying that the DPC meeting was with respect to the vacancy year 2013-14. As per the DoPT O.M dated 16.6.2000 (Annexure R-3/1), APARs for five years, upto those which became available during the year immediately preceding the vacancy year, i.e. APARs from 2007-08 to 2011-12 were relevant for this assessment. The APAR of the applicant for the year 2005-06 was taken into account in lieu of 2009-10 since no APARs were available for the year 2009-10 as well as for 2006-07. The “good” APAR of 2005-06 was retained unchanged by the competent authority after considering her representation in terms of DoPT O.M. dated 13.04.2010. These facts were noted by the DPC and same procedure was followed with regard to all the other persons under consideration before this meeting of DPC.

7. The respondents No. 1 and 2 have, however, not mentioned anything in response to the allegation regarding the period of assessment under the 2005-06 APAR being less than three months. The

Respondent No.3 (UPSC) has submitted that this issue pertains to Respondents No. 1 and 2.

8. After going through the pleadings, examining the records and hearing both the sides, we find that the only ground on which this matter stands now is about the period for which the applicant's performance was assessed while writing the APAR for the year 2005-06. It is very clear from the reading of this APAR itself that the period was less than three months. The person who wrote it has himself recorded that the applicant was on leave for 34 days out of 104 working days. The respondents have nowhere clearly controverted the fact that the performance for which she was rated "good" in 2005-06 was on assessment of work for a period of less than three months. This fact was not brought to the notice of the DPC nor was the applicant given any response when she specifically raised this matter by a petition to the Chairman, Central Board of Direct Taxes (CBDT) dated 18.09.2014 (Annexure A-34). In light of the DoPT O.M. dated 16.01.2006 (Annexure A-15), such APAR cannot be taken into consideration while judging the performance. Denying the applicant promotion for two years on the basis of this APAR alone was therefore, not correct. We, therefore, direct the respondents to conduct a Review DPC for the year 2013-14 with respect to the applicant, without looking at the APAR of 2005-06, and promote her to the post of Principal Commissioner of Income Tax with effect from 30.01.2015, if she is found otherwise fit. This should be done within a period of one month from the date of receipt of a copy of this order. There shall also be a direction to the respondents to have a Review DPC

within two months of the receipt of a copy of this order for considering consequential promotion to the post of Chief Commissioner of Income Tax, if eligible.

9. The O.A is disposed of accordingly. No order as to costs.

**(Dinesh Sharma)**  
**Administrative Member**

**(Dr. K.B. Suresh)**  
**Judicial Member**

**Cvr.**

**Annexures referred to by the applicant :**

Annexure-A1: Copy of the minutes of DPC Proceedings held on 30.04.2014 and 01.05.2014

Annexure-A2: Copy of the order for Additional Charge dated 27.09.2016

Annexure-A3: Copy of the order for CTC dated 28.09.2016

Annexure-A4: Copy of the judgment dated 10.04.2015 in O.A. No. 138 of 2015

Annexure-A5: Copy of the notification dated 31.05.2013

Annexure-A6: Copy of the OM dated 10.04.1989

Annexure-A7: Copy of the Government order dated 30.01.2015

Annexure-A8: Copy of the O.A. No. 138 of 2015

Annexure-A9: Copy of the reporting authority's letter dated 06.04.2013

Annexure-A10: Copy of the print out of the speed post net tracking

Annexure-A11: Copy of the reporting authority's letter dated 29.05.2015

Annexure-A12: Copy of the PAR for 2011-12

Annexure-A13: Copy of the notice dated 12.06.2015

Annexure-A14: Copy of the RTI reply dated 04.11.2015

Annexure-A15: Copy of the OM dated 16.01.2006

Annexure-A16: Copy of the APAR for the year 2005-06

Annexure-A17: Copy of the APAR for the year 2007-08

Annexure-A18: Copy of the APAR for the year 2008-09

Annexure-A19: Copy of the APAR for the year 2009-10

Annexure-A20: Copy of the APAR for the year 2010-11

Annexure-A21: Copy of the APAR for the year 2012-13

Annexure-A22: Copy of the APAR for the year 2013-14

Annexure-A23: Copy of the representation dated 24.06.2015

Annexure-A24: Copy of the representation dated 24.08.2015

Annexure-A25: Copy of the RTI application dated 15.10.2015

Annexure-A26: Copy of the undated representation of the applicant

Annexure-A27: Copy of the reply dated 06.11.2015

Annexure-A28: Copy of the applicant's representation dated 09.12.2015

Annexure-A29: Copy of the applicant's representation dated 21.01.2016

Annexure-A30: Copy of the PAR for the year 2014-15

Annexure-A31: Copy of the PAR for the year 2015-16

Annexure-A32: Copy of the order No. 137 of 2017 dated 16.08.2017

Annexure-A33: Copy of the joining letter of the applicant addressed to the Chief Commissioner of Income Tax

Annexure-A34: Copy of applicant's representation dated 18.09.2014

**Annexures with reply statement**

Annexure-R1: Copy of the interim order dated 08.09.2017 in O.A. No. 328/2017

Annexure-R2: Copy of the order No. 137 of 2017 dated 16.08.2017

Annexure-R3: Copy of the order dated 27.06.2017

Annexure-R4: Copy of the order dated 12.03.2014

**Annexures with reply to the amended OA**

Annexure-R5: Copy of the Office Memorandum dated 10.04.1989

**Annexures with MA**

Annexure-A35: Copy of the Civil List 2017

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