

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.3463/2017

Friday, this the 4th day of January 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Shri Gunjan Prasad Group A
Age 54 years
Son of Shri Tarkeshwar Prasad
Working as Commissioner
Income Tax Settlement Commission
Lok Nayak Bhawan, Khan Market
New Delhi

..Applicant
(Mr. N S Dalal, Advocate)

Versus

1. Union of India through its Secretary
Department of Revenue, North Block
New Delhi
2. CBDT
Through its Chairman
North Block, New Delhi

..Respondents
(Mr. Vijay Singh, Advocate for Mr. Manish Kumar, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant is an officer of Income Tax Department and at present he is working as Commissioner, Income Tax Settlement Commission. His Annual Performance Appraisal Report (APAR) for the period between 22.07.2011 and 17.02.2012 was rated below benchmark, i.e., 'good'. Aggrieved by that, the applicant filed O.A. No.1233/2014. The same was allowed through

a detailed order dated 28.04.2015. It was directed that the APAR for the said period shall be treated as 'no APAR period'.

2. The applicant contends that on account of the APAR for the said period, he was overlooked for promotion to the post of Chief Commissioner and his juniors were promoted. He contends that in view of the relief granted in O.A. No.1233/2014, a Review Departmental Promotion Committee (DPC) is required to be conducted, so that his case is considered for promotion with effect from the date, on which his juniors were promoted. This O.A. is filed with a prayer to direct the respondents to convene a Review DPC for promotion to the post of Principal Commissioner.

3. Notice was issued to the respondents way back on 03.10.2017 and thereafter the O.A. has undergone ten adjournments. In spite of an observation having been made that if no counter affidavit is filed by the next date the case would be heard on merits, the respondents did not file counter affidavit.

4. We heard Mr. N S Dalal, learned counsel for applicant and Mr. Vijay Singh for Mr. Manish Kumar, learned counsel for respondents.

5. The facts relating to the case are not in dispute. The applicant was not considered for promotion to the post of Principal Commissioner on account of his APAR for the period from 22.07.2011 to 17.02.2012. That impediment has since been removed with the order in O.A. No.1233/2014. In case any officer,

junior to the applicant was promoted to the post of Principal Commissioner, he is entitled to be considered by a Review DPC in view of the order in O.A. No.1233/2014. What surprises this Tribunal is that in spite of order in the said O.A., the respondents have shown the APAR for the period between 22.07.2011 and 17.02.2012 as 'good' in their order dated 21.08.2017. This, despite the fact that the Writ Petition filed by the respondents against the order in the O.A. was dismissed. It is not difficult to infer the amount of indifference on the part of the respondents.

6. We, therefore, allow the O.A. and direct the respondents to convene a Review DPC to consider the case of the applicant for promotion to the post of Principal Commissioner, in case any of his juniors have been promoted to that post, within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

January 4, 2019
/sunil/