

(V)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1553 /2003

This the 11th day of August, 2004.

**HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

Rajesh Ojha,
Commissioner of Income-Tax,
Officer on Special Duty,
Revenue Building,
Mumbai.

... Applicant

(None present)

-versus-

1. The Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi.

... Respondents

(By Shri V. P. Uppal, Advocate)

O R D E R (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :

As none appeared on behalf of the applicant despite revised call, we have proceeded to consider this case in terms of rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987 by considering the material on record and also hearing the learned counsel of the respondents.

(V)

2. This application has been made by the applicant against the respondents' order No.72 dated 23.6.2001 copy whereof has not been annexed in this OA. Applicant has stated that vide these orders respondents promoted his juniors to the post of Commissioner of Income-Tax taking into consideration five ACRs relating up to the year ending March, 2000 for the vacancies of the year 2001-2002 instead of ACRs for five years ending March, 2001. For the vacancies of 2000 respondents have considered five ACRs for the period ending March, 1999 instead of March, 2000, thus including the ACR for 1994-95 in which expunged adverse remarks were taken into consideration. Applicant has stated that he was never communicated any adverse ACRs and all his ACRs subsequent to 1994-95 were graded excellent on the basis of his performance. He has sought quashing of the respondents' orders dated 23.6.2001 and the related proceedings of the DPC meetings held on 30/31.1.2001 and 2.2.2001. He has further sought direction to the respondents to hold review DPCs for these meetings.

3. At the outset, the learned counsel of the respondents pointed out that the OA has been filed beyond the period of limitation. While impugned orders are dated 23.6.2001, objections in the OA were removed on 16.6.2003. Applicant has made an application MA No.1553/2003 seeking condonation of delay. He pointed out that while the OA was filed on 24.2.2003, Registry had taken certain objections which could be removed only on collection of necessary information. In view of the explanation rendered by the applicant, delay in filing this OA is condoned.

4. Applicant's basic contention is that respondents have taken into consideration five ACRs up to the year ending March, 2000 instead of five

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ACRs up to the year ending March, 2001 for vacancies of the year 2001-2002. The learned counsel of respondents has brought to our notice DOPT OM No.22011/9/98-Estt.(D) dated 16.6.2000 on the subject what the relevant year is up to which the relevant ACRs should be considered. This memorandum reads as follows :

“Relevant year up to which ACRs are to be considered

1. * * *

2. In regard to operation of the Model Calendar for DPCs, a doubt has been raised by certain quarters as to the question of the relevant year up to which ACRs are required to be considered by the DPCs. In this connection, it is once again clarified that only such ACRs should be considered which became available during the year immediately preceding the vacancy/panel years even if DPCs are held later than the schedule prescribed in the Model Calendar. In other words, for the vacancy/panel year 2000-2001, ACRs up to the year 1998-99 are required to be considered irrespective of the date of convening DPC.

3. Ministries/Departments are requested to give wide circulation to these clarifications for general guidance in the matter and also to ensure strict adherence to the time-schedule prescribed as per the Model Calendar for DPCs.”

In these instructions it has been clarified that for the vacancy year 2000-2001, ACRs up to the year up to 1998-99 are required to be considered by the DPC irrespective of the date of convening DPC. Respondents have stated that for the vacancies for the year 2000-2001, DPC considered ACRs for the years 1994-95 to 1998-99 and for the vacancies for the year 2001-2002 ACRs for the years 1995-96 to 1999-2000. Obviously, DPC has not violated Government instructions and considered the relevant ACRs only for vacancies for the year 2000-2001 and for the vacancies for the year 2001-2002. Respondents have denied to have received any representations dated 16.10.2001 and 6.6.2002 from the applicant. The applicant has not submitted any proof of having made these representations to the respondents.

5. From the material on record, it is clear that DPC had recommended applicant's name for promotion to the grade of Commissioner of Income-Tax against the vacancies pertaining to the year 2001-2002.

6. We find that DPC had considered the relevant ACRs even for the vacancies pertaining to the year 2000-2001. In the teeth of DOP&T memorandum dated 16.6.2000, applicant's ACRs for the year ending March, 2000 could not have been considered by the DPC for the vacancies of the year 2000-2001. Thus, we do not find any infirmity in the action and procedure adopted by the respondents for considering applicant's case for promotion for vacancies for the year 2000-2001 and those for the year 2001-2002.

7. Accordingly, this OA is dismissed. No costs,

S. Raju
(Shanker Raju)
Member (J)

/as/

V.K. Majotra -
(V. K. Majotra) 11.8.04
Vice-Chairman (A)