
(2018) 07 CAT CK 0109

In the Central Administrative Tribunal

Case No : Original Application No. 1237 Of 2018

Manas Shankar Ray

APPELLANT

Vs

Central Board Of Direct Taxes And Ors

RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Citation : (2018) 07 CAT CK 0109

Hon'ble Judges : L. Narasimha Reddy, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : A.K. Behera, Rajeev Kumar

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J

1. The applicant is an officer of the Indian Revenue Service of 1985 batch. At present, he is working as Principal Commissioner of Income Tax (PCIT). On 30.08.2017, an FIR was lodged in relation to a search conducted in Mumbai. The name of the applicant was mentioned therein as an officer who worked at the relevant point of time. However, neither he is shown as an accused, nor any charge-sheet is filed.

2. The respondents initiated the steps for promotion to the posts of Chief Commissioner of Income Tax (CCIT) for the year 2017-2018. The applicant is in the zone of consideration. As part of the exercise, vigilance status and vigilance clearance in respect of the officers in the zone of consideration were called for. The vigilance wing of the Directorate General, Income Tax examined the case of all officers in the zone of consideration. In respect of the applicant, vigilance status report was issued vide communication dated 15.09.2017 (Annexure A-8) covering the entire period under consideration. It was mentioned that one file is pending against the officer, and the report dated 03.07.2017 has been received. Reference was also made to the FIR dated 30.08.2017. However, nothing adverse was mentioned. Vigilance clearance was issued, covering the relevant

period, through separate proceedings of the same date, and reiterated through further communications dated 31.11.2017 (Annexure A-9) and 28.12.2017 (Annexure A-10).

3. After taking into account the vigilance status and the vigilance report, the department forwarded a panel of 32 candidates, and extended panel of 6 candidates to the Appointments Committee of the Cabinet (ACC). The ACC cleared the panel through proceedings dated 30.11.2017 (Annexure A-12). The name of the applicant figured at serial number 30 of the main panel. However, when it came to the question of issuing orders of promotion, the same was denied to the applicant. Persons below him, including those in the extended panel, were promoted as CCIT, through Order No.221 of 2017 dated 29.12.2017 (Annexure A-1). The same is challenged in this OA.

4. The applicant contends that though his name was cleared by the vigilance department, as well as the ACC, the Ministry of Finance kept his promotion in abeyance, vide office memorandum dated 22.12.2017 (Annexure A-14), and that the same cannot be sustained in law.

5. The respondents filed counter affidavit opposing the OA. It is stated that though the name of the applicant was cleared at every level, a doubt was entertained as to whether the ACC has taken into account the pendency of the file and the FIR, referred to above, and in that view of the matter, his promotion was withheld.

6. There is no dispute that the applicant is in the zone of consideration for promotion to the post of CCIT. The appointing authority forwarded the entire list of eligible officers to the vigilance wing, which, in turn, analysed the background of each of them. In respect of the applicant, existence of a file and an FIR was taken note of in the process of indicating the vigilance status. Nothing detrimental to the interest of the applicant was observed or mentioned therein. The vigilance clearance in respect of the relevant period was specifically given through Annexure A-8, and reiterated vide Annexures A-9 and A-10. Obviously, by enclosing the reports of the vigilance status as well as the vigilance clearance, apart from other relevant records, the appointing authority forwarded a panel and an extended panel, to the ACC. In Annexure A-12, the ACC cleared the names of the officers appearing in the panel as well as the extended panel. Nothing was mentioned against the name of the applicant, or, for that matter, any other officer. Naturally, officers, who were cleared, were entitled to be promoted. As a matter of fact, all others were promoted, except the applicant and another.

7. The only basis for withholding the promotion of the applicant, is contained in office memorandum dated 22.12.2017 (Annexure A-14). Para 4 thereof pertains to the applicant, and it reads as under:

"4. The facts regarding lodging of FIR by CBI and pending investigation in respect of the above two officers (S.No. 1 and 30 of the main panel) were

mentioned in the proposal submitted to the ACC vide CBDT's OM dated 17.11.2017. In case, these facts were not brought to the notice of ACC, the same may be placed before the ACC for re-consideration of its earlier decision for empanelment in respect of these two officers. Meanwhile, the promotion orders in respect of these two officers are being kept in abeyance till receipt of the communication from DOP&T in this regard."

A perusal of this discloses that there is a contradiction between the first sentence and the second sentence. While the first sentence categorically mentions the relevant facts, including the lodging of FIR by CBI, being mentioned in the proposal submitted to the ACC; in the second sentence, a doubt is expressed, and it is decided to place the very FIR before the ACC for re-consideration of its earlier decision. This kind of exercise is not referable to any rule. Once, the entire process of promotion was subjected to the prescribed procedure, and the name of the applicant was cleared at every stage, there was absolutely no basis for denying promotion to the applicant. Things would have been different, had any new fact, adverse to the applicant has been noticed, in the meanwhile. If the view expressed in Annexure A-14 is to be accepted, the entire exercise undertaken by the vigilance wing as well as the ACC, vis-a-vis the applicant, virtually becomes nugatory. The career of senior officers, like the applicant, cannot be subjected to such uncertainties or vagaries. However, now that the matter is said to have been taken to the ACC once again, the process needs to be completed at the earliest, and not later than four weeks from the date of receipt of this order. If nothing adverse to the applicant turns out within that period, the rights of the applicant arising out of Annexure A-12 dated 30.11.2017 need to be implemented.

8. We, therefore, allow this OA, and direct that the appointing authority shall implement the panel as approved by the ACC vide Annexure A-12 dated 30.11.2017, insofar as it relates to the applicant, in the context of issuing orders of promotion to the post of Chief Commissioner of Income Tax, unless any contrary view is taken by the ACC within four weeks from the date of receipt of this order.

9. There shall be no order as to costs.