IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2016

Coram

The Honourable Mr.Justice R.SUDHAKAR
and
The Honourable Mr.Justice S.VAIDYANATHAN

W.P.No.20375 of 2009 and
M.P.No.1 of 2009

1. The Union of India
rep. by the Secretary
Department of Revenue
Ministry of Finance,
Government of India,
New Delhi 110 001.

2. The Chairman,
The Central Board of Direct Taxes,
Ministry of Finance
North Block, New Delhi 110 001 ..Petitioners

..vs..

1. The Central Administrative Tribunal
Rep. by its Registrar
City Civil Court Buildings,
High Court Campus,
Chennai.

2. A.G.Sriram
Addl. Commissioner of Income Tax
Range III, C.R.Bldg. I.S.Press Road
Kochi 682 018. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the proceedings of the 1st respondent Tribunal in O.A.No.165 of 2006 dated 29.04.2009 and quash the same.

For Petitioner : Mr.V.Vijay Shankar
For Respondents : R1- Tribunal
R2- No appearance

O R D E R

This writ petition is filed challenging the order of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") passed in O.A.No.165 of 2006 dated 29.04.2009.

2. The 2nd respondent, while working as Deputy Commissioner of Income Tax, was aggrieved that he was not considered for promotion to the post of Joint Commissioner of Income Tax for the year 2004-05, while his juniors were considered and promoted. He preferred original application before the Tribunal in O.A.No.165 of 2006 on the ground that non consideration of his name was due to uncommunicated adverse remarks. The Tribunal, after considering the rival submissions has passed the following order:-

> "11. In these circumstances, the O.A.No.165 of 2006 was heard by us. Following the decision rendered in O.A.24 of 2007, we direct the respondents to communicate the adverse entries in the ACR of the applicant of the relevant years and get his comments. The above should be communicated to the applicant within a period of one month from the date of receipt of a copy of this order and the applicant would give his representation to the respondents within one month thereafter. After receipt of the representation from the applicant, we direct the respondents to constitute a review DPC for consideration of the applicant for promotion if found suitable to the post of Joint Commissioner of Income Tax. We further direct that the aforesaid review DPC shall not consider the ACR wherein the downgrading has been done, in other words, the same shall be ignored. The ACR to be considered would be one year immediately before the downgraded ACR. We also direct that the review DPC should be held within three months from the date of receipt of a copy of this order".

Aggrieved over the said order passed, the department is before this Court.

3. Though notice was served on the 2nd respondent and his name is printed in the cause list, when the matter is taken up for hearing, there is no representation for him.

4. This Court heard the submissions made by the learned counsel for the petitioners.

5. Insofar as the first component of the order of the Tribunal viz., the authorities to communicate the adverse entries in the ACR of the 2nd respondent of the relevant years and get his comments is concerned, it is stated that the same has been complied with. It is further stated that the representation of the 2nd respondent was also taken into consideration and thereafter, his claim was rejected.

6. The grievance of the petitioners is with respect to the latter portion of the operative portion of the order of the Tribunal, wherein a direction was given to the effect that while reviewing DPC, the authorities shall not consider the ACR wherein the downgrading has been done. According to the learned counsel for the petitioners the latter portion of the order would go contrary to the earlier direction issued and hence on such ground, the present writ petition is filed.

7. On considering the submissions made by the learned counsel for the petitioners and upon perusing the materials available on record, we find that the contention of the learned counsel for the petitioners is justified, because, while a direction was given to communicate the adverse entries and to get his comments, the Tribunal is not justified in giving further direction that the adverse entries should be ignored totally for the purpose of reviewing DPC. As a matter of fact, the adverse entries have been communicated, comments were called for, the same was considered and rejected. It is brought to the notice of this Court that the 2nd respondent has also reached the age of superannuation.

8. The grievance of the 2nd respondent has been duly considered in the manner known to law. Therefore, writ petition stands allowed and the latter portion of the impugned order of the Tribunal dated 29.04.2009 made in O.A.No.165 of 2006 is set aside. In all other respects, the order of the Tribunal is confirmed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To
1. The Registrar
Central Administrative Tribunal
City Civil Court Buildings,
High Court Campus,
Chennai.

+1cc to Mr.V. Vijay Shankar, Advocate, S.R.No.14109

RSY(CO)
EU(22/03/2016)