

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00487/2018

DATED THIS THE 11th DAY OF DECEMBER, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

K.Shek Abdul Kareem
Chief Accounts Officer Customs (Retired)
Aged about 63 years
Door No.4-57/8, "N.N.Cottage"
Sharada Nagar
2nd Cross, Madoor
Post Kotekar-575 022.
Mangalore (Tq)
Dakshina Kannada District.

....Applicant

(By Advocate Sri K.Hanifa)

Vs.

1. The Union of India
Rep. by its Secretary
Department of Revenue
North Block
New Delhi-110 001.

2. Secretary
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi-110 001.

3. Principal Chief Commissioner of Central Tax
Bangalore Zone
P.B.No.5400
Central Revenue Building
Queens Road
Bangalore-560 001.

4. Commissioner of Central Tax
Bangalore Zone
Central Revenue Building
Queens Road
Bangalore-560 001.Respondents

(By Advocate Sri.K.Gajendra Vasu, Sr.PC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was appointed as LDC on 26.12.1973 and was promoted as UDC/DOS-LI (All Gr-C) in his turn. Further, he was promoted as Administrative Officer(AO gazetted Gr-B) on 7.10.1996. The applicant was posted as Assistant Chief Accounts Officer(ACAO) in the year 2001 as per Commissioner of Customs, Mangalore Establishment Order dtd.18.12.2001(Annexure-A1) and vide order dtd.26.12.2001(Annexure-A2), he was directed to look after the work of Chief Accounts Officer(CAO), Customs, Mangalore. Since then, the applicant was looking after the works of Chief Accounts Officer, Customs, Mangalore. Thereafter, he was promoted as Chief Accounts Officer(CAO) on 28.11.2014 vide Ministry's office order dtd.28.11.2014(Annexure-A10) and he reported for duty in Customs, Mangalore on 9.1.2015 i.e. at the fag end of his service and he retired on 28.2.2015 on attaining superannuation. Even though the said promotion was made on the basis of DPC for the year 2010-2011 as per the letter dtd.30.10.2014(Annexure-A9), the promotion was effective only from the date of assumption of charge. In 2015, the President of India had issued appreciation certificate to the applicant for extraordinary devotion to duty and specially distinguished record of service(Annexure-A11). The applicant submits that the respondents ought to have promoted him before his retirement as per DoP&T's letter dtd.9.8.1999, but they failed to do so, which forced him to file OA.89/2016 and the said OA was disposed of on 25.1.2017(Annexure-A14) directing the respondents to dispose of the applicant's representation. Accordingly, the applicant submitted his representation on 12.4.2017(Annexure-A15) requesting to grant him promotion

as CAO from 2010-11 with all consequential benefits. In response to the above representation, the 2nd respondent issued impugned order dtd.25.9.2017(Annexure-A16) rejecting the claim of the applicant stating that as per the DoP&T OM dtd.10.4.1989 'while promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s)'. When he sought copy of the CAT order of Ernakulam Bench in OA.No.996/2012 dtd.28.1.2013 passed in the case of Sri.K.T.Kanakarajan, AO(Retd) through RTI, the Cochin office sent copies vide letter dtd.1.1.2018(Annexure-A3) with copies of implementation of the order and pay fixation with consequential benefits granted to Sri K.T.Kanakarajan. In that order in para-7, the 2nd respondent was directed to ensure that the applicant in that OA is promoted if his name is included in the select list for 2008-09 or subsequently. Against the said order, the respondents have approached the Hon'ble High Court of Kerala in OP(CAT) No.1801/2013 which upheld the order of CAT, Ernakulam Bench vide order dtd.3.6.2013(Annexure-A4). Thereafter, the 2nd respondent has implemented the order in OA.No.996/2012 vide order dtd.12.2.2014(Annexure-A7). The applicant submits that this order is squarely applicable in his case as his name is at Sl.No.8 in assessment for the year 2010-11 and as per assessment in DPC letter dtd.30.10.2014, the applicant was fit for promotion to the post of CAO in 2010-11, but the respondents failed to promote him. Further in the case of Sri T.A.Ramasubramanian, Asst.Commissioner(Retd) on grant of Senior Time Scale on notional and adhoc basis, his pay was re-fixed w.e.f. 1.7.1978 by the 2nd respondent vide office order dtd.20.3.2013(Annexure-A5). And also the pay of Sri Sanjay Singhal, Addl.Commissioner of Central Excise(Retd) is re-fixed due to the

promotion to the grade of Joint Commissioner after his retirement w.e.f. 31.12.2013 as per the statement of re-fixation of pay by the 2nd respondent vide order dtd.1.8.2016(Annexure-A13). But in his case, the respondents have failed to follow the same principle. Thus the applicant has not only lost his Group A status at the right time while in service, but also could not reap the fruits of his unblemished long service of over 41 years. Since the applicant was looking after the works of CAO, Customs, Mangalore as per the order dtd.26.12.2001, his pay is to be fixed from 2010-11 onwards notionally and should get arrears of pay and allowances from 2010-11 onwards. Further, the qualifying service prescribed in the Recruitment Rules-2013 for promotion as CAO is 3 years in the feeder cadre i.e. AO/ACAO but he is considered after 11 years, hence the action of the respondents is against the recruitment rules(Annexure-A6). Further the injustice meted out to the applicant is total infringement of equality clause enshrined under Article 14, 16 & 39(d) of the Constitution. Therefore, the applicant has filed the present OA seeking the following relief:

- a. Call for the relevant records leading to the issuance of impugned order at Ann-A16 and on perusal by quashing the impugned order F.No.A-23011/18/2016-Ad-IIA dt.25.09.2017 issued by the Respondent-2 as arbitrary, discriminatory and bad in law and direct the respondents to modify the date of promotion of the applicant to such other date for which he became eligible as per 2010-11 DPC at Ann-A9 and to grant consequential benefits on his promotion as CAO from such modified date.*
- b. Direct the respondents to place the applicant on par with his contemporaries who were similarly placed with all such consequential relief/s legitimately admissible to him and*
- c. Pass any other order or direction as deemed fit by this Hon'ble Tribunal including an order for award of cost of this application in the interest of justice and equity.*

2. Per contra, the respondents have submitted in their reply statement that the claim of the applicant is against the GOI's instruction vide DoP&T OM dtd.10.4.1989(Annexure-R1) which provides that promotion will have only

prospective effect in case where the vacancies relates to earlier years. Regarding the reasons for not conducting the DPCs within time frame, they submit that though it is the endeavour of the Government to hold timely DPCs, sometimes it is not possible to adhere to the prescribed guidelines due to administrative reasons. The requisite documents in respect of candidates under zone of consideration are collected from the concerned field formation and complied by CBIC. The shortcomings are removed through a series of correspondence, which take time leading to procedural delay. Hence, there has been no deliberate delay on the part of answering respondent. The Board conducted DPC for adhoc promotions for vacancy year 1996-97 and 1997-98 and for regular promotions for the years 1998-99 to 2006-07. DPC for regular promotion for vacancy year 2013-14 and 2014-15 was conducted on 12.8.2016. The sequence of events does indicate that the Board has been making efforts to adhere to the timelines prescribed by the DoP&T to the extent possible. The candidature of the applicant for regular promotion from AO to CAO(C.Ex) was considered for vacancy year 2010-11 for regular promotion by DPC held on 30-31/10/2014. Thereafter, he was promoted as CAO vide office order dtd.28.11.2014(Annexure-R2). They have considered the applicant's representation dtd.12.4.2017 and found that the same is not in consonance with DOPT guidelines and he was rightly promoted to the post of CAO(C.Ex) vide order dtd.28.11.2014 with prospective effect in terms of GOI instructions. Hence, his request has been rejected and informed vide order dtd.25.9.2017. The applicant relied on the order of the Ernakulam Bench of this Tribunal in OA.No.996/2012 in the case of Sri K.T.Kanakarajan, AO but the said order is applicable to Sri K.T.Kanakarajan only. In the instant case, the applicant was

empanelled for promotion to the grade of CAO in the DPC held for the vacancy years 2010-11, 2011-12 and 2012-13 and was promoted accordingly, in terms of the extant rules. As regards the case of Sri T.A.Ramasubramanian who filed OA.No.98/2005 before the Chennai Bench of this Tribunal, his request for promotion w.e.f. 15.6.1976 the date on which his junior Sri K.S.Shivaraman was promoted to Gr.A was considered and he was promoted to the grade of Asst.Commissioner w.e.f. 15.6.1976. As regards the case of Sri Sanjay Singhal, the recommendations of the DPC held on 19.6.2009 and 12.11.2010(review DPC) regarding promotion to the grade of Dy.Commissioner was kept in sealed cover on account of charge sheet and after the charges were dropped, Sri Sanjay Singhal was promoted to the grade of Dy.Commissioner on ad-hoc basis. Subsequently, he represented for ante-dating his promotion to the grade of Dy.Commissioner as on dropping the charges, the sealed cover should have been opened and he should have been promoted with reference to his juniors. Accordingly, to rectify this error the sealed cover was opened and his promotion was ante-dated. Hence, both the cases of Sri T.A.Ramasubramanian and Sanjay Singhal are entirely different and not applicable to the applicant's case. Therefore, the applicant is not entitled to any relief and the OA is liable to be dismissed.

3. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the date of the OM mentioned in the reply statement is 10.4.1989 whereas in the Annexure-R1, it is mentioned as 10.3.1989. By saying that the said OM provides that promotion will have only prospective effect in case where the vacancies relates to earlier years holds no water and shows the failure on the part of the respondents in not conducting the DPC as per the prescribed

time-frame in the Model Calendar. Further, the reasons stated for not conducting timely DPCs due to administrative reasons is against the DoP&T's OM dtd.14.12.2000(Annexure-A17) which says that 'non-adherence to prescribed timeframe is a serious concern and responsibility for the lapse to be fixed'. Further it is mentioned that the OM dtd.8.9.1998 about prescribing a Model Calendar for DPCs in order to ensure that DPCs are convened in advance and approved select panel are prepared well before commencement of the relevant vacancy years. The respondents have failed to follow the above procedures in the case of the applicant though the applicant become fit for promotion to CAO as per the panel 2010-11 but he was promoted as CAO vide office order dtd.28.11.2014 i.e. after a lapse of nearly 3 years. The respondents have not stated as to why the delay has taken place in the case of the applicant. But the submission of the respondents that the endeavour has been made and not possible to adhere to the prescribed guidelines due to administrative reasons is not acceptable and against the guidelines. If the timely steps would have been taken by the respondents to promote the applicant before his retirement i.e. during 2010-11 when he become fit as per the DoP&T letter dtd.9.8.1999, the applicant would have benefited the promotional benefit of CAO, but failure on the part of the respondents on not taking timely action caused financial loss while he is in service and also after retirement. The case of Sri.K.T.Kanakarajan in the OA.No.996/2012 is squarely applicable in his case as Sri Kanakarajan was the 5th candidate in the zone of consideration for the year 2008-09 and accordingly the Tribunal directed the respondents to promote him from 2008-09 to the grade of CAO as he was the 5th candidate in the zone of consideration. In the instant case, the applicant was the 8th candidate in the zone of consideration and the

DPC should have promoted him as CAO during 2010-11 when DPC was conducted instead of 30-31/10/2014. Further the cases of Sri T.A.Ramasubramanian and Sri Sanjay Singhal are not on different footings and it squarely applicable to the present case. Hence, his claim for promotion for the vacancy year 2010-11 to the grade of CAO with all benefits is just and proper.

4. The respondents have filed additional reply statement reiterating the submissions made in the main reply and submit that the case of Sri K.T.Kanakarajan is different to the present one and in view of the peculiar facts and circumstances, its ratio cannot be extended to another case where facts and circumstances are entirely different. It is settled law as has been held in *O.G.I. of M.E and Research v. Raj Kumar* (2001 AIR SCW 77) that 'a decision of rendered in peculiar facts and circumstances of the case cannot be precedent in subsequent case which is based on its own facts'. It is also held in *Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd* (AIR 2003 SC 511) that 'a decision, as is well known, is an authority for which it is decided and not what logically be deducted there from. It is also well settled that a little difference in facts or circumstances may make a lot of difference in the precedental value of a decision.' Shri T.A.Ramasubramanian and Sri Sanjay Singhal were promoted to their respective grades based on the contention that their juniors were promoted. In the present case, the applicant has not been able to cite any case where his juniors were promoted as CAO w.e.f. 28.11.2014. Thus both the cases are entirely on different footings and have no comparison with his case.
5. The applicant has filed additional rejoinder stating that due to fag end of his promotion as CAO, he could get less pension benefits i.e. for not even a month. The reason stated for not conducting timely DPCs due to administrative reasons

is against the DoP&T OM dtd.14.12.2000(Annexure-A17) and is also vague and against the guidelines. The cases of Sri K.T.Kanakarajan who was promoted being in the zone of consideration for the year 2008-09, Sri T.A.Ramasubramanian who was promoted in the review DPC and Sri Sanjay Singhal who was granted ante date promotion, are applicable in his case and his claim for promotion for the vacancy year 2010-11 to the grade of CAO with all benefits is just.

6. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The issue in this case is in a very small compass. The applicant was eligible for promotion for the vacancy year 2010-11 and this fact is not disputed by the respondents anywhere. Therefore, it is clear that the applicant had every right to be promoted as CAO for the year 2010-11 but for the fact that the DPC was not held at that time and was held only in the year 2014. As rightly contended by the respondents, as per the Govt. of India instructions, the applicant cannot have the monetary effect for such promotion since he had not actually worked in the promoted post before 2014. But the fact remains that he was eligible for promotion with effect from 2010-11 and therefore there is no doubt that he is entitled for such promotion with notional effect from the year 2010-11 when he was due. His case is exactly similar to OA.No.996/2012 which was decided by the Ernakulam Bench of this Tribunal in the case of Sri K.T.Kanakarajan. However much the respondents would claim that it is not the same, it is obvious that there is absolutely no difference between the two cases and the applicant is eligible for the prayer he has made with respect to his being eligible as per the 2010-11 list for which he was found fit by the respondents themselves vide Annexure-A9 and he will be eligible for all

consequential benefits on his promotion as CAO from the modified date from which he became eligible. Therefore, Annexure-A9 will have to be modified accordingly. The OA is allowed and the respondents are directed to issue necessary orders within a period of two(2) months from the date of issue of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00487/2018

Annexure-A1: C.No:II/3/19/2001 E1-E.O.No.28/2001 dtd.18.12.2001

Annexure-A2: C.No:II/3/19/2001 E1-E.O.No.29/2001 dtd.26.12.2001

Annexure-A3: CAT Ernakulam Bench order in OA.No.996/2012 dtd.28.1.2013

Annexure-A4: Order of Kerala High Court dtd.3.6.2013

Annexure-A5: Re-fixation of pay from 1.7.1978 as per MOI order No.70/2013
dtd.20.3.2013 of Sri T.A.Ramasubramanian

Annexure-A6: R.R dt.4.12.2013

Annexure-A7: C.No:II/39(9)/10/2012 Estt-I-Order No.26.2014 – for implementing Cat order dtd.12.2.2014 in case of Sri K.T.Kanakarajan

Annexure-A8: C.Ni.II/3/9/2012 E.1-E.O.No.17.2014 dt.19.6.2014-reallocation of work on promotion of Sri.Gopalakrishna

Annexure-A9: F.No.1/15(23)/2014-AP.2 dt.31.10.2014-refer page-44-sl.8-Assessment for year 2010-11-Applicant-fit

Annexure-A10: F.No.A-32012/2013-As.IIA-Promotional order No.4/2014-as below the grade of CAO-Grade Pay Rs.5400/-

Annexure-A11: appreciation Certificate-2015

Annexure-A12: F.No.A-32012/12/20/2015-Ad.II-O.O.36/2016 dt.07.04.2016-ante date promotion of Sri.Sanjay Singhal

Annexure-A13: C.No.II/24/II/2016 dt.01.08.2016 Accounts-Statement of re-fixation of pay of Sanjay Singhal

Annexure-A14: CAT Bangalore Order in OA.No.89/16 dt.25.01.2017

Annexure-A15: Representation

Annexure-A16: Order F.No.A-23011/18/2016-Ad-IIA dt.25.09.2017-issued by R-2

Annexures with reply statement:

Annexure-R1: DoP&T OM dtd.10.4.1989

Annexure-R2: Office order dtd.28.11.2014

Annexures with rejoinder:

Annexure-A17: G.I., DoP&T OM No.22011/9/98-Estt.(D) dtd.14.12.2000

Annexures with additional reply:

-NIL-

Annexures with additional rejoinder:

-NIL-
