

**Central Administrative Tribunal
Madras Bench**

OA/310/01008/2014

Dated the 12th day of July Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

R.Sekar,
Superintendent of Customs (Preventive) (retd.),
No.7, (Old No.4) Krishnappa Mudali Street,
Triplicane, Chennai 600 005. .. Applicants
By Advocate M/s.K.H.Ravikumar

Vs.

1. The Chairman,
CBEC/M/o Finance,
North Block,
New Delhi 110 001.
2. The Joint Secretary (Admn.),
CBEC/M/o Finance,
North Block,
New Delhi 110 001.
3. The Chief Commissioner of Customs,
Custom House,
Chennai 600 001. .. Respondents

By Advocate Mr.D.Ragupathy

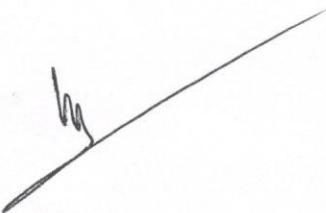
ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“.....a direction directing the respondents to give notional promotion as Deputy Commissioner of Customs and Central Excise w.e.f. 2006 on par with his juniors with all other service and monetary benefits (with due regards to seniority) and thus render justice.”

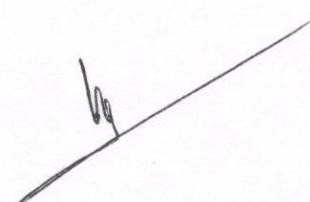
2. The case of the applicant in brief is that he entered Customs Department as Lower Division Clerk (LDC) in the year 1970 and he was appointed as Preventive Officer (PO) on 18.11.1974. After completion of 20 years, he was promoted to the grade of Superintendent of Customs (Preventive) w.e.f. 01.7.1994. While he was working as Superintendent, the CBI authorities had registered a case against some of the officers including the applicant as C.C.No.21/2001. The department has also initiated the disciplinary proceedings against him. The CC filed before the Special Judge, CBI was finally ended in acquittal and the proceedings before the Disciplinary Authority (DA) continued. At last, on 24.3.2011, the DA had dropped further proceedings after his retirement. Since disciplinary proceedings was pending, his promotion was not considered and the DPC has kept his promotion under sealed cover. Even after dropping of disciplinary proceedings, the respondents had not taken any action for promoting him. Eventhough, he had filed representation for promoting him, it was not considered. His juniors were promoted and he is entitled to get promotion on par with them. Therefore, the applicant approached this Tribunal



by way of OA 781/2013 seeking notional promotion as Assistant Commissioner of Customs and Central Excise w.e.f. 2002 onwards and as Deputy Commissioner thereafter. The Tribunal was pleased to direct the 1st respondent to consider the representation filed by the applicant in the light of the OM dated 22.11.1990 and 08.1.2003 and to pass a reasoned and speaking order within a period of 6 weeks. Even then the respondents had not passed any order and he was forced to file CP 189/2013. Thereafter, the applicant was promoted as Assistant Commissioner of Customs and Central Excise w.e.f. 10.12.2002 as per proceedings dated 17.12.13. The respondents had only partly complied with the grievance of the applicant and denied the consequential promotion of Deputy Commissioner of Customs w.e.f. 2006 onwards. Hence he filed this OA.

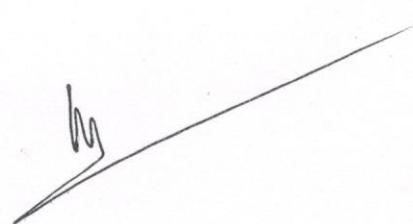
3. According to the applicant, he is entitled to notional promotion to the post of Deputy Commissioner on par with his juniors and he also seeks consequential benefits. According to him, the delay in promotion had occurred only due to the fault of the respondents and he cannot be denied the benefits. The applicant has failed to appreciate the fact that the respondents ought to have given the promotion to the post of Deputy Commissioner also after the dropping of proceedings. His juniors have been promoted to the post of Deputy Commissioner from the year 2003 onwards and he is not granted the same.

4. The respondents entered appearance and filed a detailed reply denying the

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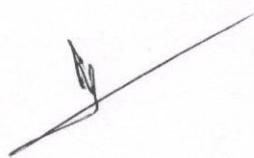
allegation given in the application. According to the respondents, the promotion given to the applicant as per order dated 17.12.13 was only on adhoc basis and it will not ~~confir~~ any seniority or qualifying service for further promotion. As per Rule 19 of Indian Revenue Service (Customs & Central Excise) Recruitment Rules, 1987, the appointment of Grade V of the service (Deputy Commissioner of Customs & Central Excise) shall be made by promotion of officers in Grade VI (Assistant Commissioner of Customs & Central Excise) in the order of seniority subject to rejection of the unfit and **on completion of 4 years regular service** in Grade VI. The applicant in this case has not put in regular service and he is not entitled to get any further promotion as claimed by him. Those who are promoted as Deputy Commissioner were in service and have completed 4 years of service and only because of that they were promoted. The action of the respondents is not arbitrary as alleged in the application.

5. We have anxiously heard the counsel for the applicant and the counsel for the respondents in this case. If we go through the pleadings in this case, we can see that the point to be considered in this case is whether the applicant is entitled to get promotion to the post of Deputy Commissioner without considering the regular service required under Rule 19 of Indian Revenue Service (Customs & Central Excise) Recruitment Rules, 1987. The counsel for the applicant in this case mainly relies upon the decision in OA 873/2007, OA 1178/2014 and order in SLP No.8425/2014 in this case. If we go through the above orders, it can be seen that



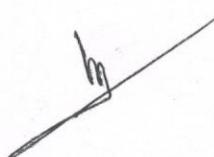
these judgments are not at all applicable to the applicant in this case as the persons mentioned in these cases had completed 4 years of regular service when they were promoted to the post of Deputy Commissioner. Here the applicant was promoted notionally w.e.f. 10.12.02 and he was not in service as he was retired at that time. According to the applicant, he is entitled to get further promotion to the post of Deputy Commissioner as his juniors were promoted.

6. On a perusal of the reply of the respondents in this case, it can be seen that the applicant in this case has not put in 4 years of regular service in the post of Assistant Commissioner as contemplated in the rules and without complying with the above rules, the applicant cannot be considered for promotion to the post of Deputy Commissioner. The counsel for the respondents mainly rely upon the decision of the Hon'ble High Court in *The Commissioner of Customs, Customs House, Chennai v. S.Krishnamoorthy in WP No.17380 and 35745 of 2004* which was disposed off on 28.1.09. The Hon'ble High Court in a similar case had held that "in the present case if a direction would be given that the person was to be promoted in 1999 with effect from the date when his juniors were promoted, it would be like issuing a Mandamus to the Union of India to act contrary to the statutory provisions which contemplate that a person can be promoted to Grade V only after having served for four years in Grade VI." The Hon'ble High Court had also observed that the orders passed by this Tribunal in OA 482/03 and OA 159/2004 cannot be relied upon for bye-passing the



rules. The above decision also refers to this Tribunal order in OA 757/2000 and OA 1305/2001 wherein directions were issued for giving promotions. The applicants in the above OAs had not completed 4 years of regular service as contemplated in the rules. The Hon'ble High Court has observed that "merely because a wrong decision of the Tribunal was followed by the department in some matters, it may not be appropriate for us to direct the Union of India to go with similar irregularity in all other cases. No persons can claim equality on the basis of an erroneous decision. As observed by the Hon'ble Supreme Court in Col.B.J.Akkara case, neither the principle of resjudicata nor the principle of estoppel would be attracted to the facts of the present case. The erroneous decision of the Tribunal cannot be considered as a binding decision for the High Court to be followed. The Hon'ble High Court has disposed off the above WP holding that no order can be passed in violation of the rules prevailing on the subject." In this case also the applicant was not in service on the date of granting notional promotion and he has not put in regular service of 4 years as contemplated under Rule 19 of Indian Revenue Service (Customs & Central Excise) Recruitment Rules, 1987. The applicant was given notional promotion to the post of Assistant Commissioner on the basis of the sealed cover kept by the DPC for his promotion and it was given only on adhoc basis and it is made clear that he will not get any seniority or service benefits on the basis of the said order.

7. In view of the above, we are of the opinion that the applicant has not qualified

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for the promotion to the post of Deputy Commissioner as claimed by him. He has not put in regular service of 4 years for getting the promotion. Therefore, OA lacks merit and is liable to be dismissed.

8. Accordingly, OA is dismissed. No costs.