

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Wednesday the 3rd day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)

THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1268/2014

Gladys Lily,

W/o. R. Paulsamy,

Aged 59 years,

Working as Superintendent,

Central Excise, Nagercoil,

Residing at Annai Hospital,

Karungal-629 157,

Kanyakumari District.

.....Applicant

(By Advocate: M/s. Giridhar & Sai)

Vs.

1. Union of India Rep. by
The Deputy Secretary,
Central Board of Excise & Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110 001;
2. Chief Commissioner,
O/o. the Chief Commissioner of Central Excise,
26/1, Mahathma Gandhi Road,
Nungambakkam, Chennai- 600 034;
3. The Commissioner of Central Excise,
Tirunelveli Commissionerrate,
Tirunelveli;
4. Md. Iqbal
Assistant Commissioner,
Chennai Zone,
26/1, Mahathma Gandhi Road,
Nungambakkam, Chennai-600 034;

5. Narasimhan P.M.,
Assistant Commissioner,
Chennai Zone,
26/1, Mahathma Gandhi Road,
Nungambakkam, Chennai-600 034;
6. J. Illango,
Assistant Commissioner,
Chennai Zone,
26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai-600 034.

.....Respondents.

(By Advocate: M/s. S. Rajasekar (R1-R3))

ORDER

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

This is an OA filed seeking the following relief:-

- “(i) To call for the records pertaining to Order No. F.No.A-32012/11/2013-Ad.II dated 31.03.2014 passed by the 1st respondent and to quash the same in so far as the promotions of 4th, 5th and 6th Respondents to the post of Assistant Commissioner are concerned;
- (ii) to direct the Respondents to promote the applicant to the post of Assistant Commissioner w.e.f. 31.3.2014 with all other consequential benefits, including arrears of pay and allowances in the said post; and
- (iii) pass such further and other orders as may be deemed fit and proper and thus render justice.”

2. The brief facts of this case is as follows:-

The applicant joined the service on 1.2.1975 as Inspector of Central Excise. On 02.03.1993 she was promoted as Superintendent of Central Excise. While working as Superintendent, she was involved in a Criminal Case and was suspended with effect from 09.09.1998. The Trial Court convicted her and High Court confirmed her conviction. She filed Criminal Appeal before the Supreme Court and the Hon'ble Apex Court set aside the conviction on 26.10.2004. She filed OA No.

472/2005 to set aside the order of dismissal dated 20.08.2001. The Tribunal allowed the OA and she was ordered to be reinstated. The respondents preferred W.P. 11627/2005 before Madurai Bench of the High Court. The WP was dismissed. The appellant was reinstated into service on 20.01.2006. The respondents thereafter initiated disciplinary proceedings for misconduct and absconding from service with effect from 09.05.1998 to 01.02.2000 and she was placed under suspension. After inquiry, the applicant was dismissed from service by order dated 01.12.2006. The said order was challenged by filing OA 09/2010. The Tribunal modified the penalty to stoppage of three increments with cumulative effect and directed to reinstate the applicant. Applicant filed W.P. 22201/2010 and the Hon'ble High Court set aside the order of the Tribunal. The applicant was again reinstated into service with effect from 15.5.2012. According to the applicant, she is eligible for promotion as Assistant Commissioner. A Departmental Promotion Committee (DPC) was convened on 06.03.2014 to fill up 149 vacancies in promotion quota for the year 2012-2013. But she was not promoted and her juniors were given promotion (Respondent No.4, 5 & 6) as per order

dated 31.03.2014. The failure to consider to promote her is arbitrary and illegal. Hence this OA.

3. The respondents appeared and filed reply stating the facts leading to the Criminal Case and various OAs filed by the applicants. According to them, a DPC was held on 06.03.2014 for promotion and the applicant's name was at Sl. No.3 and she was also included in the consideration list. The DPC considered character rolls/ACRs of eligible officials as per DOPT instructions O.M. No. 22011/5/86 dated 10.04.1989. But the applicant's name could not be considered for want of relevant ACR's. The DPC has to assess the suitability of the officers for promotion on the basis of their Service Record and with reference to the CR's for preceding five years immediately of the vacancy. The applicant's ACR was available only for the period 1993 to 1998. No report certificates (NRC's) was issued for the period 1998 to 2012. The applicant was again considered by the DPC on 17th to 20th October 2014. But DPC did not assess her, as NRC's were not found acceptable. The DPC also considered the fact that the non-availability of ACRs immediately two preceding years is necessary for posts involving higher responsibility.

4. The counsel for the applicant would contend that the applicant was not considered in both DPCs for promotion for

want of ACRs. As per the procedure of the D.O.P&T O.M. No. 22011/5/86 Estt (D) dated 20.06.86.

"6.2.1 (c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account."

In this case, the DPC has not taken into consideration the CRs of the years preceding the period in question and considered the case of the applicant for promotion.

5. On the other hand, counsel for the respondents would contend that the DPC has power to evolve its own methods for coming to a finding and it should not be interfered.

6. We have considered the rival contentions of both sides and perused the records.

7. While it is the right of the applicant to get her case considered by the DPC, it is for the DPC to evolve its own procedure to come to a decision based on the instructions of the DOP&T referred earlier. In this case, the DPC has not considered the case of the applicant in the light of the DOP&T OM where a particular procedure is prescribed for considering the cases of

employees whose CRs have not been written during a relevant period. The respondents had not given any explanation why the case of the applicant was not considered in the light of the instructions contained in DOP&T OM dated 13.07.1989 in this respect.

8. Accordingly, we find that applicant has a right to get his case considered by the DPC on the basis of ACRs preceding to the period in question. Hence, the OA stands disposed of to the extent as follows:-

"The respondents are directed to convene a review DPC to consider the case of the applicant in the light of the guidelines given in DOP&T OM dated 13.07.1989 and pass orders in accordance with rules and regulations considering the ACR's available within a period of six months from the date of receipt of copy of the order."

9. OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)

03.06.2020

Asvs