

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/207/2020

Hyderabad, this the 5th day of March, 2020



Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

Manish Kumar Choubey,
S/o. Lalumuni Choubey,
Age: 32 years, Occ: Inspector (Preventive Officer),
Custom House, Port Area,
Visakhapatnam.

... Applicant

(By Advocate: Mr. K. Sudhakar Reddy)

Vs.

1. Union of India,
Rep. by its Chairman,
Central Board of Indirect Taxes & Customs,
North Block, New Delhi.
2. The Commissioner of Customs,
Customs House,
Port Area, Visakhapatnam.

... Respondents

(By Advocate: Mrs. Pranathi Reddy, Proxy Counsel
representing Mrs. K. Rajitha, Sr. CGSC)

ORDER

{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed seeking a direction to the respondents to promote the applicant from the date of promotion of his immediate junior.

3. Brief facts of the case are that the applicant worked as Inspector in the respondent organization. His juniors namely Mr. M. Babu Rao, Mr. P.

Suresh were promoted as Superintendents on 26.06.2018. Applicant, being senior, has to be considered when juniors were promoted by relaxing the residency period in the Inspector grade to the extent of 2 years as prescribed in the Recruitment Rules and as per the DOPT OM dated 25.03.1996. The respondents despite clear orders of the DOPT have not considered the case of the applicant for promotion. He, therefore, made a representation on 21.08.2019 and the same is yet to be disposed. Aggrieved over the same, the OA has been filed.



4. The contentions of applicant are that he is eligible for promotion based on DOPT OM dt. 25.03.1996 and as per law declared by the Full Bench of Principal Bench of the Tribunal at New Delhi in OA Nos. 3405/2014, 169/2018, 239/2017 & 1885/2017. The ground for promoting the applicant has emerged due to the judgment of the Hon'ble Apex Court in ***R. Prabha Devi & Ors v. Government of India, (1988) 2 SCC 233*** and as a result, the OM No.AB-14017/12/88-Estt. (RR) dt. 25.03.1996 has been issued. Coordinate Bench of this Tribunal in OA No. 4313/2012 has held that inordinate delay in amending the Rules cannot deprive the applicants of their promotion. Considering the promotion of a junior while denying the same to him, who is senior, amounts to discrimination.

5. Heard both the counsel and perused the pleadings on record.

6. The case of the applicant is fairly covered by the decision of the Hon'ble Principal Bench of this Tribunal in Jyoti vs. Ministry of Finance in OA No. 4640/2018, decided on 19.12.2018, wherein it was held as under:

“6. In the circumstances, the OA is disposed of at the admission stage itself without going into the merits of the case by directing the respondents to re-consider the claim of the applicants keeping in view the decision in Pankaj Nayan & Ors. vs. UOI & Ors. in OA No. 3405/2014 dated 12.05.2016 as upheld by Hon’ble High Court in WP(C) No. 11277/2016 dated 29.10.2018 within four weeks from the date of receipt of a certified copy of this order. Till then, the respondents shall not declare the result of the DPC, if any, conducted during the said period.



Besides, the DOPT OM dt. 25.03.1996 has made it emphatically clear as under:

“Where juniors who have completed their qualifying/ eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/ eligibility service by more than half of such qualifying/ eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/ eligibility service.”

Applicant has made a representation citing the grounds on which he should be considered.

7. In view of the above, after hearing both the counsel, the respondents are directed to dispose of the representation keeping in view the decision in Pankaj Nayan & ors vs. UOI in OA No. 3405/2014, dated 12.05.2016 and also other grounds raised by the applicant as indicated in the OA and thereafter, issue a speaking and reasoned order, within a period of 8 weeks from the date of receipt of copy of this order. OA is accordingly disposed of at the admission stage itself. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

/evr/