

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00239/2017

Dated this Friday, the 17th day of January, 2020

**CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N.SINGH, MEMBER (J)**

Pushpa A. Dethe, W/o of Shri Ashok R. Dethe,
Age 60 years was posted as an Appraiser
in the office of Commissioner of Customs (E.P.)
New Customs House, Ballard Estate, Mumbai
Presently residing at : House No.1004/1005, Plot No.11/12,
Kesar Harmony, Ballard, Sector - 6, Kharghar,
Navi Mumbai 410 210. **- Applicant**
(By Advocate Shri H.G.Dharmadhikari)

VERSUS

1. Union of India, Through Deputy Secretary,
to the Government of India,
Central Board of Excise and Customs,
Department of Revenue, Ministry of Finance,
North Block, New Delhi 110 001.
2. Chairperson, Central Board of Excise and Customs,
North Block, New Delhi 110 001.
3. Principal Commissioner of Customs Mumbai.
New Customs House, Ballard Estate,
Mumbai 400 001. **- Respondents**
(By Advocate Shri N.K.Rajpurohit)

ORAL ORDER

Per : R.N.Singh, Member (Judicial)

Heard Shri H.G.Dharmadhikari, learned
counsel for the applicant and Shri
N.K.Rajpurohit, learned counsels for the
respondents.

2. The applicant has challenged the order
dated 26.05.2016 (Annex A-1) issued by the
respondents on her representation dated

10.12.2015 rejecting her claim for adhoc promotion to grade/post of Assistant Commissioner of Customs and Central Excise with effect from 22.10.2014. The applicant has prayed for the following reliefs in the present OA :-

“8.1. That this Hon'ble Tribunal be pleased to call for the records and proceeding of the DPC conducted on 17-19 October 2014 and the review DPC held on 3rd, 4th and 8th June 2015 in which the Applicant has been considered for promotion to the post of Assistant Commissioner of Customs.

8.2. This Hon'ble Tribunal is hereby prayed to direct the respondent authority to grant the benefit of promotion retrospectively as directed by this Hon'ble Tribunal vide Order dated 06.02.2015 in OA No.571/2014 with all consequential benefits.

8.3. Any other and further order as this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the case.”

3. In response to the notice from this Tribunal, the respondents have filed their reply disputing and denying the applicant's claim. The applicant has filed rejoinder and the respondents have filed sur-rejoinder wherein the parties have reiterated their submission made in the OA and reply, respectively.

4. The brief facts leading to the present case are that the applicant was promoted to the post of Appraiser of Customs vide order dated 30.06.2000 which was regularized with

effect from 30.11.1998 vide letter dated 25.11.2002.

5. The learned counsel for the applicant argued that the applicant was entitled to be considered for promotion to the post of Assistant Commissioner of Customs and Central Excise. However, she was not considered by the respondents well in time and she retired on 31.01.2015 without getting promoted as Assistant Commissioner of Customs and Central Excise.

6. It is further submitted that the applicant was considered for promotion to the post of Assistant Commissioner of Customs and Central Excise by the DPC held on 17/19.10.2014 and her name was duly recommended by the DPC. However, she was not promoted on account of pending litigation. Subsequently, a review DPC was convened by the respondents on 3th, 4th and 8th June, 2015 for the said posts but she was not promoted as she had already retired on 30.01.2015, though her various juniors have been considered and promoted as Assistant Commissioners of Customs and Central Excise with effect from 22.10.2014 on notional basis.

7. The learned counsel for the applicant also argues that the claim of the applicant is squarely covered by the common order/judgment dated 22.04.2010 of the Principal Bench of this Tribunal in OA No.1409/2009 title Shri P.G.George Vs. Union of India and Another with a batch of other OAs.

8. Shri N.K.Rajpurohit, learned counsel for the respondents with the assistance of their reply vehemently argues that there was no occasion for the respondents to promote the applicant with effect from 22.10.2014 as the review DPC itself was held in the month of June, 2015 and well before that time she had retired on 31.01.2015. He further contends that no juniors of the applicant was promoted while the applicant was in service i.e. 31.01.2015. However, he does not dispute the fact that the various juniors of the applicant were promoted with effect from 22.10.2014 on notional basis i.e. with effect from the date when the applicant was very much in service.

9. We have perused the pleadings on record and have considered the submissions made on behalf of the parties through their counsels.

10. This Tribunal in the aforesaid common order/judgment dated 22.04.2010 of the Principal Bench of this Tribunal in OA No.1409/2009 title **Shri P.G.George** (supra) after considering the law laid down by the Hon'ble Apex Court in catena of cases as noted various paragraphs including paragraph No.8 of the judgment of the Hon'ble Apex Court in **Union of India & Others Vs. K.K.Vadera and others reported in 1989 Supp (2) SCC 625** which reads as under :

"8. It is thus very clear that :

there is no rule that promotion should be given from the date of creation of the promotional post;

if promotions are effected prospectively from the date of issue of the order of promotion, retired employees would not be eligible for promotion retrospectively; and if promotion is granted retrospectively and a person junior to the retired employee has been promoted from the date when the retired person was in service and if the retired person has been found fit by the DPC, such retired person would be entitled to promotion retrospectively on notional basis from the date his immediate junior has been promoted. This is clear from the judgement in **Baijnath Sharma**, as it has been paraphrased in **Rajendra Roy** (supra) in paragraph 16, quoted above. Moreover, it has further been clarified by the Honourable High Court in **Rajendra Roy** (supra) itself in paragraph 25 of the judgement, which has been quoted above."

11. In paragraph No.12 of the aforesaid judgment in **Shri P.G.George** (supra), this Tribunal has held as under :

"12. In the result, the OAs are allowed. The Respondents are directed to grant notional promotion to the Applicants from the date their immediate juniors were promoted in various Select Lists of the years 2003, 2004, 2005 and 2006. The promotion would be notional but it would count towards increments and consequently in

recalculation of post-retirement dues. The Respondents would recalculate the dues and make these over to the Applicants as expeditiously as possible but not later than 15.06.2010. There will be no order as to costs."

12. The above judgment of the Tribunal in **Shri P.G.George** (supra) has attained finality since the Writ Petition filed against it was dismissed by the Hon'ble High Court of Delhi vide order dated 23.07.2010 in Writ Petition (C) No.4864/2010.

13. In view of the aforesaid facts and discussion and the judgment of this Tribunal in **Shri P.G.George** (supra) upheld by the High Court of Delhi, the present OA is partly allowed with the following directions:

(a). the respondents are directed to pass order of promotion of the applicant as given to her juniors with effect from 22.10.2014, if she was otherwise fit for the promotion;

(b). on being so found fit, in view of the order to be passed as per (a), the applicant be granted all consequential benefits of refixing of her pay and pension with arrears. The applicant shall also be entitled for interest at the rate as admissible on GPF on such arrears of pay and pension, from the date on which they had become due to her till the date of payment thereof.

(c). However, it is made clear that the applicant shall not be entitled for arrears of pay as the fixation of pay is to be done only on notional basis.

(d). However, in the facts and circumstances, no order as to costs.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

kmg*

JD
25/01

