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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2728/99

New Delhi this the 24th day of August, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)

Ms. Vijai Lakshmi Sharma,
Commissioner of Customs & Central Excise,
Room No.136, C.R. Building,
I.P. Estate,
New Delhi.

...Applicant

(By Advocate Shri M.K. Gupta)

-Versus-

1. Union of India through
Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110 001.

2. Chairman,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

...Respondents

(By Advocate Shri R.R. Bharti)

O R D E R (ORAL)

By Sh. Govindan S. Tampi, Member (Admnv):

The applicant before us is Smt. Vijay Lakshmi Sharma, an officer of the Indian Customs and Central Excise Service and the relief sought by her is to direct the respondents to grant her promotion on ad hoc basis to the rank of Commissioner of Customs and Central Excise which was ordered in December, 1997, but did not include her name though subsequently on the basis of the DPC held in February, 1998 she was found fit for regular promotion. She was working as a Deputy Director of Inspection at the relevant time when she proceeded on two years study leave, which continued upto middle of 1998. She also took some leave thereafter to look after her ailing mother. During this period a DPC was held in December 1997, by which a few

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officers of 1975 batch, including some of her juniors were promoted as Commissioners on ad hoc basis by order No.187/97, vide F.No.A.32012/10-97-Ad II dated 19.12.97, impugned in this application. The said order, however, did not include her name. Subsequently, on the basis of the DPC conducted in February 1998, involving UPSC, she was found fit for promotion on regular basis to the rank of the Commissioner and was so appointed by order No.11/99 dated 12.1.99. Some of her juniors who were promoted on ad hoc basis in December, 1997 were placed junior to her in the promotion order of January, 1999. She had expected that she would be granted promotion on next below rule and had made representations to the CBEC ^{orally} and in writing on 14.9.99 and not getting any response, has moved this Tribunal.

2. The applicant's claim is that as she had been found fit for regular appointment to the grade of Commissioner on the basis of the findings of the duly constituted DPC in ^{February} ~~July~~, 1998 she could not have been denied the benefit of ad hoc promotion by the Screening Committee in December, 1997 on the basis of the same records of performance, more so as the standard expected in ad hoc selection is less stringent than in the regular selection. In the circumstances, she requests for all reliefs from promotion on ad hoc basis since December, 1997 and consequential benefits.

3. Controverting the applicant's plea, the respondents point out that the Screening Committee which met in December, 1997, did not recommend her case for ad hoc promotion though some of her juniors had been so promoted on ad hoc basis for more than a year. Since, on the basis of

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the DPC meeting held in December, 98, she has been found fit for regular promotion and which has been ordered in January, 1999 without any loss of seniority for her, she has no case. Even otherwise ad hoc promotion was only a stop-gap-arrangement. The application is hit by limitation having been filed two years after the cause of action. While not denying that she has represented against denial of her ad hoc promotion, the respondents state that findings of the Screening Committee which met ⁶ ₄ recommended the names of persons fit and available for promotion on ad hoc basis and those of regular DPC need not tally. They could make independent assessments on their own. Her claim for ad hoc promotion on 19.12.97, fixation of pay or drawal of arrears between 19.12.97 and 11.1.99 were not permissible under any rules as she was not working as Commissioner during the period, urge the respondents.

4. We have heard the learned counsel for the applicant and the respondents. The applicant states that while she was found fit for promotion to the rank of the Commissioner on regular basis, which called for a strict criterion of seniority-cum-fitness-cum-merit, she was not considered fit for promotion on ad hoc basis which called for the lesser criterion of seniority-cum-fitness. As a result of this delayed promotion she has been denied not only emoluments of the higher post but other benefits which her juniors were granted. Her request for promotion on NBR has also been denied. In the reply, it has been indicated by the respondents that she was not recommended for promotion on ad hoc basis by the Screening Committee as she was on leave at the relevant time and she would not have been available ^{for posting.} _{It} is also urged by the counsel that being a Senior Officer she

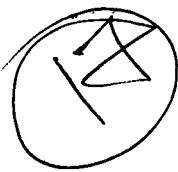
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should have understood that by not getting the ad hoc promotion she has not lost anything material, as she has made the grade in the regular manner without losing any seniority. And she should be satisfied with that, urges the counsel for respondents.

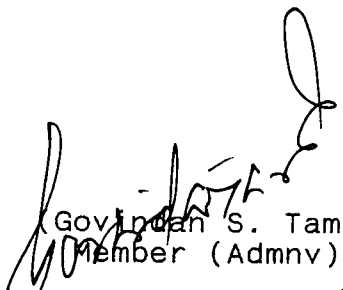
5. We have given careful consideration to the rival contentions. As she had come in this OA, not getting the relief sought in the representation dated 14.9.94, the OA is not hit by limitation. It is possible, as the respondents say, that the findings of the Screening Committee which met to locate officers for promotion on ad hoc basis and the DPC which met to select the officers on regular basis may not tally. But in the circumstances of the case, we are not convinced, that is the position. Respondents have not brought to our notice or attention any reason as to why she could not have been considered for ad hoc promotion when on the basis of the same set of facts and records, she was found fit for regular promotion just after few months. It would appear that some extraneous reasons were present but such unexplained reasons have no place in a correct administration where the Govt. acts as the model, transparent and impartial employer. It is evident that the applicant has been denied her due vis-a-vis her colleagues and juniors who have been given the higher grade, pay and benefit of increment. That has to be set right.

6. In view of the above, the application succeeds and is allowed. The respondents are directed to treat the applicant as having been promoted ^{on ad-hoc basis} to the grade of Commissioner from the date on which her immediate junior, Sh. Ajit Kumar was promoted on ad hoc basis and to grant her



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consequential reliefs of fixation of pay and increments in the higher grade. She would, however, be entitled for the arrears only with effect from the date she took over the higher charge on ~~19-1-99~~ ¹²⁻¹⁻⁹⁹ *This should be done* within two months from the date of receipt of this order. We also award her Rs.5000/- (Rupees Five Thousand only) towards costs of this OA.


(Govindan S. Tampi)
Member (Admnv)
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(V. Rajagopala Reddy)
Vice-Chairman (J)