

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 2320/89

DATE OF DECISION: 6.4.1990

SHRI H. L. MAGGO

APPLICANT

SHRI R.R. RAI

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI P.H. RAMCHANDANI

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal *No*

J U D G E M E N T

(Of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

This application has been filed on 17.11.1989 against the impugned order No. 334/89 of 30.10.1989 and 356/89 dated nil issued by the respondent No. 2 promoting Respondents No. 3 & 4, who are junior to the applicant, to officiate as Superintendent Group 'B' Customs and Central Excise (Rs. 2000-3500), under section 19 of the Administrative Tribunals Act. By way of relief the applicant has prayed that the impugned orders promoting officers junior to the applicant may be set aside.

2. The facts of the case, briefly, are that the applicant has been working as the Inspector, Customs and Central Excise since

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25.5.1973. He was confirmed in the post w.e.f. 31.7.1980. The applicant was placed under suspension along with 3 Inspectors and 1 Superintendent by the Collector of Customs, New Delhi on 10.4.1985 as disciplinary proceedings were contemplated against him, Annexure-B (page 17 of the paper book). The suspension order came in for adjudication by the Tribunal in OA No. 1479 and 1623 when the same was quashed vide judgement dated 4.1.1988. Consequently, the applicant and others were taken back on duty vide orders at Annexure 'C' (page 18 of the paper book). The period of suspension was treated as spent on duty for all purposes including pay and allowances.

3. The applicant has submitted that a DPC was held in the month of May, 1989 when he also came up for consideration for promotion to the grade of Superintendent (Group B). While his juniors have been promoted in consequence of DPC's recommendations, in his case the recommendation of the DPC is said to have been kept in sealed cover. While there are no judicial or departmental proceedings pending against the applicant, the action taken by the respondents seems to have been based on a complaint made against the applicant and others which was pending investigation with the CBI.

4. The respondents in their counter have submitted that the applicant and others were found to have been involved in allowing the unauthorised export of various items of garments under the false declaration "India items" on shipping bills. On a complaint received by the Additional Collector of Customs, Palam Airport, it was found that 59 consignments, which were seized for

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reexamination, contained goods which were not in conformity with the declaration made in the export documents. As a large number of private firms and persons were involved in the illegal export of items which were subject to quota restrictions, the case was referred to CBI for thorough investigation. A regular case was registered by the CBI vide RC No.39/85 dated 28.6.1985. As a result the applicant along with three other Inspectors was placed under suspension. The applicant filed OA No. 1623/87 which was disposed of on 11.1.1988 by the Tribunal observing that there has been unconscionable delay in the initiation of disciplinary proceedings and that it cannot be justified on any count, much less in a case where the public servant was under suspension. Consequently, the applicant, along with others, was reinstated. Since then the report from the CBI has been received and the CBI has recommended prosecution of the applicant among others. The matter is being processed in the Revenue Department, Ministry of Finance. In these circumstances the DPC held on 5.5.1989 adopted sealed cover procedure.

5. We have heard the Ld. Counsel of both the parties and gone through the record carefully. We have also considered the cases* relied upon by both the parties.

*1. Judgement Today 1989(4) SC 377 C.O. Arumugam and Ors. Vs. The State of Tamil Nadu & Others.

2. CAT(PB)'s decision dated 31.5.1988 in Shri Satish Chandra Gulati Vs. UOI.

3. Full Bench Judgement, CA, K.Ch.Venkatareddy and Ors. Vs. UOI & Ors.

4. SLR 1986 (3) CAT 398 - JP Sethi Vs. UOI & Ors.

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6. We find that no charge has been framed in the disciplinary proceedings against the applicant nor any charge sheet has been filed. It has been held by the Supreme Court in CO Arumugam & Ors. Vs. State of Tamil Nadu that

"promotion may be deferred when charge has been framed in the disciplinary proceedings or charge sheet has been filed in criminal case."

Again the Full Bench of Central Administrative Tribunal in the judgement dated 2.3.1987 in the case of in Venkata Reddy & Ors. VS UOI after discussing the matter in great detail, held that:


"an officer can be said to be under investigation only when a charge sheet is filed in a criminal court or charge memorandum under CCA Rules is issued to the officials. In the instructions in cases of officers against whom a decision has been taken by the disciplinary authority to initiate proceedings and those against whom sanction for prosecution is issued, sealed cover procedure is contemplated. Between the decision and the actual initiation of proceedings, there may be a time lag which may not be uniform and specific. To ensure uniformity and certainty, the date of initiation of proceedings should be taken as the basis for applying the sealed cover procedure and it is well established that the date of initiation of proceedings is the date when the charge memo is served on the official and the

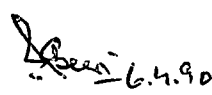
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charge sheet is filed before the court."(emphasis supplied).

7. From the counter of the respondents, it is seen that even a decision to frame charge or to prosecute the applicant, has not been taken - much less service of charge sheet or filling the charge sheet in a criminal case.

8. In the facts and circumstances of the case, we do not find any merit in keeping the recommendations of the DPC in the sealed cover in respect of the applicant. We therefore order and direct that the sealed cover containing the recommendations of the DPC held on 5.5.1989 in respect of the applicant should be opened within 15 days from the date of communication of this order and recommendation made by the DPC implemented w.e.f. the date his juniors were promoted, in case, he had been found suitable. There shall be no orders as to the cost.


(I.K. Rasgotra)
Member (A) 6/4/90


(T.S. Oberoi)
Member (J)