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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1960/2004

New Delhi this the 13th day of January, 2006

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Kripa Shankar
S/o Shri Ram Sanehi
R/o 112-A, Munirka Village
New Delhi.

-Applicant

(By Advocate: Shri G.D., Gupta with Shri S.K. Sinha)

Versus

1. Union of India,
Through the Secretary,
Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Registrar
Customs, Excise and Service Tax
Appellate Tribunal, (CESTAT)
R.K. Puram, West Block No.2,
New Delhi.
3. Shri Mukesh Gupta
Asstt. Registrar
CESTAT, R.K. Puram,
West Block No.2,
New Delhi.

-Respondents

(BY Advocate: Shri Rajiv Kumar, proxy for Shri J.B. Mudgil, for R-1
Ms. Vibha Dutta Makhija with Shri Philemon Nongbri, for R-2
Shri Harpreet Singh, for R-3)

ORDER

Hon'ble Shri V.K. Majotra, Vice Chairman (A)

Applicant has challenged Annexure A-1 dated 4.8.2004 whereby respondent No.3 Shri Mukesh Gupta has been promoted to the post of Assistant Registrar on regular basis in scale Rs.6500-200-10500/- at Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Delhi. According to the applicant he is the senior most Court Master who is eligible for promotion to the post of Assistant Registrar as per the Recruitment Rules. It is alleged that respondent No.3 does not possess the essential qualification but has been selected for the

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post. The applicant though qualified and eligible has not, at all, been considered for selection.

2. In their counter reply, respondents have stated that one post of Assistant Registrar against promotion quota fell vacant on 13.7.2004. Respondent No.3 Shri Mukesh Gupta, senior most Court Master who held the degree of Bachelor of General Law (BGL, for short) by a recognized university was promoted to the post of Assistant Registrar w.e.f. 4.8.2004 on the recommendation of the Departmental Promotion Committee. Respondents have denied that applicant is a senior most Court Master possessing degree of law.

3. Learned counsel of the applicant contended that respondent No.3 Shri Mukesh Gupta possesses degree called Bachelor of General Law which has a duration of two years course conducted by Annamalai University. He contended that this qualification is not a recognized qualification by the Bar Council of India. As a matter of fact, the Annamalai University also conducts a course of three year duration which is called 'Bachelor of Academic Law', which is also not recognized by the Bar Council of India. On the other hand, applicant possesses a regular LLB degree and is only the qualified person as per rules for being considered for promotion to the post of Assistant Registrar. Learned counsel further stated that the DPC for selection to the post of Assistant Registrar was not constituted as per rules. He pointed out that as per rules the composition of the DPC is:-

1. President/Sr. Vice President of CESTAT - Chairman
2. Vice Chairman/Member of CESTAT - Member and,
3. Registrar, CESTAT - Member

Ch

4. Learned counsel pointed out that the post of President was vacant and Ms. Jyothi Balasundaram, Head of Department acted as Chairman, which is against the provisions of the rules.
5. On the other hand, learned counsel of respondents contended that respondent No.3 was considered by the Selection Committee being eligible in terms of Annexure R-2 dated 7.8.1998 in accordance with which the BGL degree of Annamalai University has to be the degree of law of a recognized university. He further stated that Ms. Jyothi Balasundaram was performing the current duties as Head of the Department and that she was fully empowered to exercise administrative or financial powers vested in the full fledged incumbent of the post. Participation in a DPC does not constitute exercising any statutory powers which she could not have exercised. In this connection, he relied on G.I., M.H.A. O.M. No. F. 7/14/61-Ests. (A) dated 24.1.1963 as also 2 SCR 1331 Pradyat Kumar Bose Vs. The Hon'ble Chief Justice of Calcutta High Court in which it was held that power to appoint or dismiss an officer is an administrative power and not a statutory power. Respondents have also filed the records relating to the DPC meeting held on 4.8.2004.
6. We have considered the respective contentions and also perused the material on record.
7. As per the seniority list of Court Masters as on 1.11.99 while respondent No.3 Shri Mukesh Gupta is the senior most Court Master, applicant has been shown at Serial No.9. Obviously, applicant is not the senior most candidate for the post of Court Master. Vide Annexure R-2 dated 7.8.98 on examination in the Department of Personnel and Training, Department of Revenue has held that Annamalai University is a recognized University, therefore, the certificates/degrees issued by them are automatically recognized for the purposes of employment/promotion in Central Government. As such, BGL Degrees issued from that University is also recognized though it is not being

recognized as a professional degree. Respondent No.3 possesses the BGL degree, which may not be recognized by the Bar Council of India, which recognition is necessary for practising the legal profession in courts of law but it certainly meets the requirements of the Recruitment Rules to the post of Assistant Registrar in CESTAT. In this light, applicant is certainly qualified for consideration for the post of Assistant Registrar in CESTAT.

8. As per Annexure A-3 dated 5.12.94, which are the Customs, Excise and Gold (Control) Appellate Tribunal (Group 'A' & 'B' posts) Recruitment Rules, 1987, the post of Assistant Registrar is a selection post. Thus, all eligible Court Masters were required to be considered for promotion by the DPC. From the records of the DPC, it is established that DPC considered only the case of respondent No.3 Shri Mukesh Gupta being the senior most candidate and did not consider the applicant at all as an eligible candidate.

9. As to the issue whether Ms. Jyothi Balasundaram, Head of Department could become the Chairman of the DPC, respondents have relied upon MHA OM dated 24.1.1963 and the case of *Pradyat Kumar Bose* (supra). For the sake of reference, MHA OM dated 24.1.1963 is reproduced below:-

"(5) Officer performing current duties can exercise administrative and financial powers of the post but not the statutory powers- An officer appointed to perform the current duties of a post in addition to his own can exercise administrative or financial powers vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether these powers are derived direct from an Act of Parliament (e.g., Income Tax Act) or Rules, Regulations and By-laws made under various articles of the Constitution (e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules, etc.)".

10. In the case of *Pradyat Kumar Bose* (supra), it was held that power to appoint or dismiss an officer is an administrative power and not a statutory power. In this light, no exception can be taken to the appointment of Ms. Jyothi Balasundaram, Head of the Department as Chairman of the DPC. Thus,

although there cannot be quarrel with the constitution of the DPC, the process of selection has certainly been defective not being in-consonance with the rules. It is found from the note for the DPC as also minutes of the DPC that only one candidate, i.e., respondent No.3 was considered by the DPC. Applicant, who was also eligible for consideration for promotion to the post of Assistant Registrar was not, at all, considered. As per the Recruitment Rules, promotion to the post of Assistant Registrar is a selection post and it is imperative that all eligible candidates must be considered by the DPC. Consideration for promotion is the right of all eligible candidates. A candidate may or may not be selected but he must be considered by the DPC.

11. Considering the facts and circumstances of this case as discussed above, both respondent No. 3 and the applicant are eligible for consideration to the post of Assistant Registrar. We do not find any infirmity with the constitution of the Selection Committee. However, selection of respondent No.3 cannot be upheld as the applicant who was also eligible, was not considered by the DPC at all.

12. In result, Annexure A-1 dated 4.8.2004 whereby respondent No.3 Shri Mukesh Gupta was promoted to the post of Assistant Registrar, is quashed and set aside. Respondents are directed to conduct a review DPC in which all eligible candidates including the applicant should be considered for promotion to the post of Assistant Registrar. Respondents are directed to carry out the exercise of selection afresh, expeditiously, and preferably within a period of three months from the date of communication of these orders.

13. OA is allowed in the above terms. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Vice Chairman (A)

cc.

13.1.06