

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1917/93

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T.A. No.

DATE OF DECISION 9.7.98

Sh.A.K.Chhabra

....Petitioner

Sh.J.K.Srivastava

....Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

....Respondent

Sh.R.R.Bharti

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K.Muthukumar, Member(A)

1. To be referred to the Reporter or not? YES

2. Whether it needs to be circulated to other
Benches of the Tribunal? NO.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A. 1917/93

New Delhi this the 9th day of July, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member (J).
Hon'ble Shri K. Muthukumar, Member (A).

Shri A.K. Chhabra,
S/o late Shri H.L. Chhabra,
Commissioner of Central Excise,
121, Nungambakkam, High Road,
Madras-600034. Applicant.

By Advocate Shri J.K. Srivastava.

Versus

1. Union of India, through
its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001.
2. The Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi-110 001.
3. Shri S.P. Srivastava,
Collector of Customs & Central Excise,
Chandigarh.
4. Shri R.G. Raju,
Collector of Central Excise,
Aurangabad.
5. Shri Virender Singh.
JT CCI&E,
Ministry of Commerce,
Udyog Bhawan,
New Delhi-110 011.
6. Shri Dalbir Singh,
Dy. Director General,
Narcotics Control Bureau,
Delhi.
7. Shri V.K. Asthana,
Collector of Customs & C.E. (Judicial),
Pune.
8. Shri P.R. Venkataraman,
Director (Training),
Regional Training Institute,
Madras.
9. Shri J.N. Nigam,
Collector of Central Excise,
Vadodara.

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10. Shri S.K. Bhardwaj,
Collector of Customs (Judl.),
Ballard Estate,
Bombay.

11. Shri N. Obherai,
Collector of Customs (Appeals),
Bombay. ... Respondents.

By Advocate Shri R.R. Bharti.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The applicant is aggrieved by the order dated 13.10.1992 rejecting his request for grant of notional promotion to the grade of Collector of Customs and Central Excise (CC & CE) with reference to the date of promotion of his immediate junior Shri S.P. Srivastava in 1987. He claims that he ought to have been placed in the Civil List 1990 at Serial No. 65 whereas he has been placed at Serial No. 74.

2. The brief facts of the case are that the applicant who belongs to the Indian Customs and Central Excise Service states that in the list of officers in the grade of Deputy Collector as on 1.10.1987, his name figures at Serial No. 6 above that of Shri S.P. Srivastava and below Shri S.K. Misra. A DPC had been held in 1987 for promotion from the post of Deputy Collectors to Collectors. The applicant's case was kept in a sealed cover at that time because of the pendency of departmental proceedings. By order dated 31.10.1988 the departmental proceedings were dropped by the President. The applicant's grievance is that in spite of this order, the respondents have not given him any notional promotion and seniority in the promoted post in accordance with the recommendations of the DPC held in 1987 but have promoted him against the vacancy of 1989 thereby making him nine places junior to Shri S.P. Srivastava.

He had made representations against this action to which the respondents had replied by order dated 13.10.1992. Hence, this O.A. challenging the position assigned to him in the seniority list on 1.9.1990 in which his name figures at Serial No. 74 and Shri S.P. Srivastava at Serial No. 65.

3. Shri J.K. Srivastava, learned counsel for the applicant relies upon Para 12 of the judgement of the Supreme Court in **Union of India Vs. K.V. Jankiraman** (AIR 1991 SC 2010) and submits that since the applicant has been completely exonerated in the disciplinary proceedings as the same have been dropped, he cannot be deprived of the benefits of the promotional post, including seniority w.e.f. 27.9.1988 when Shri S.P. Srivastava was promoted as Collector. He has also claimed backwages from that date. He has very strenuously argued that there is no reason to deny these benefits to the applicant having regard in particular to the observations of the Supreme Court in para 12 of Jankiraman's case (*supra*). He has, therefore, submitted that the action of the respondents in rejecting the applicant's representation is arbitrary and illegal and violative of the provisions of law. He has also relied upon the judgement of the Supreme Court in **R.K. Jain Vs. Union of India** (AIR 1993 SC 1769) and certain instructions on the subject of sealed cover procedure dated 30.1.1982, 12.1.1988 and 14.9.1992. His contention is that as per the DOP&T instructions dated 12.1.1988 upon full exoneration in the disciplinary proceedings, the sealed cover is to be opened and the findings of the DPC have to be implemented. Regarding the judgement of the Supreme Court in **Union of India & Ors. Vs. N.P. Dhamania & Ors.** (1995 Supp (1) SCC 1) relied upon by the respondents, he has submitted that even the Appointments Committee of the Cabinet (ACC) cannot act in an arbitrary manner and it should record its reasons for differing

with the DPC which are material for the decision. He submits that this has not been done. The learned counsel has, therefore, submitted that the respondents should be asked to reconsider the matter and if the ACC has recorded some reasons differing with the DPC, the same should be referred to the UPSC for obtaining their opinion.

4. The respondents have filed their reply in which they have controverted the above facts and we have also heard Shri R.R. Bharti, learned counsel. The respondents have submitted that the applicant was considered for promotion to the grade of CC&CE by the DPC held in December, 1987. As the disciplinary proceedings were pending against him at that time, his recommendations were kept in a sealed cover in accordance with the DOP&T instructions. When the disciplinary proceedings were ordered to be dropped by the President on 31.10.1988, the sealed cover was opened but the promotion of the applicant on the basis of the findings of the DPC of 1987 was not approved by the competent authority, i.e. ACC. The applicant was accordingly considered by a subsequent DPC held in December, 1989 and January, 1990 along with others and on the basis of that recommendation, which was accepted by the competent authority, he was promoted against the vacancy for the year 1989 w.e.f. 5.4.1990. The respondents have submitted that since the applicant could not get his promotion to the grade of CC&CE on the basis of the recommendations of the DPC of 1987, he had lost his seniority vis-a-vis some of his juniors. They have stated that after the disciplinary proceedings were dropped his representation for grant of notional promotion and seniority with reference to the date of promotion with his immediate junior on the basis of the recommendations of DPC of 1987, ~~XXXXXX~~¹³ was considered but was not accepted by the competent

authority. Shri R.R. Bharti, learned counsel, has submitted the original official records for our perusal in which the applicant's case has been considered for promotion by the competent authority i.e. the ACC. He has submitted that Respondent 1 has twice submitted the proposal for considering the applicant's case for promotion on the basis of the recommendations of the DPC held in 1987 but has not been accepted by the Appointments Committee of the Cabinet. In the circumstances of the case, he has submitted that following the judgement of the Supreme Court in N.P. Dhamania's case (*supra*), the application may be dismissed. Reference has also been made to the judgement of the Supreme Court in Union of India & Anr.

Vs. Samar Singh and Ors. (1997 (1) SLJ 56).

5. Some of the private respondents have also filed their replies although none had appeared when the case was heard.

6. We have given our anxious consideration to the pleadings and the submissions made by the learned counsel for the parties and perused the records. In N.P. Dhamania's case (*supra*), the Supreme Court was also dealing with a batch of cases which were recommended for promotion by a DPC held by the UPSC which required approval of the ACC, but the ACC did not approve the names of the respondents. The issues before the Supreme Court were: (i) Whether it was open to ACC to differ from the recommendation of the DPC and if so whether reasons must be given for so differing. (ii) Whether those reasons need ~~not~~ be communicated to the officer concerned; and (iii) Whether the Central Administrative Tribunal could grant a 'deemed promotion'.
YB

In this case, the Supreme Court held that "The Tribunal clearly exceeded its jurisdiction when it ordered "deemed promotion" of the respondents. The Tribunal felt that a reference back to UPSC by ACC for adopting a more rigorous view of the select list was an exercise in futility and, therefore, the Tribunal ordered deemed promotion. This finding of the Tribunal cannot be supported. The ACC will have to consider the case of the respondent on merits with reference to the records".

From para 14 of the case, it is seen that the Supreme Court came to the conclusion that the counsel for the Union of India was unable to produce any material to show that reasons had been assigned by the ACC for differing from the DPC. The Apex Court held that the recommendations of the DPC being advisory in nature are not binding on the appointing authority and it is open to that authority to differ from the recommendations in public interest. This was held to be "beyond doubt". It was further held as follows:

"... Notwithstanding the fact that it is open to the ACC which alone is the appointing authority and not the Minister concerned, as urged by the respondent to differ from the recommendations of the DPC, it must give reasons for so differing to ward off any attack of arbitrariness. Those reasons will have to be recorded in the file. It is required to be stated at this stage that we have perused the file in the instant case. We find no reasons have been recorded for differing from the recommendations of the DPC. That is why the Tribunal also inter alia observed in the impugned judgement as under:

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"However, the counsel for the respondent felt helpless in the matter and he failed to provide us any inkling of what prevailed with the ACC in dropping the petitioner and four others out of the select panel of 59 officers."

"If the file had contained reasons something could be said in favour of the appellant. But, that is not the case here. Then the question would be whether the reasons recorded are required to be communicated to the officer concerned. Our answer is in the negative. There is no need to communicate those reasons. When challenged it is always open to the authority concerned to produce the necessary records before the court".

In the result, the Supreme Court in **N.P. Dhamania's case (supra)** ordered that the ACC may reconsider the cases in the light of the observations made above and if they found the concerned officer suitable, they may give him promotion with effect from the date his immediate junior was promoted with consequential benefits of salary, etc.

7. In the present case we have carefully examined the official records pertaining to the promotion of the applicant keeping in view the judgement of the Supreme Court in **Dhamania's case (supra)**. We find that the competent authority, that is the ACC have recorded reasons as to why they had deferred the applicant's promotion and waited to see the reports for the years 1987 and 1988 which has been approved at the highest level by the Hon'ble Prime Minister once on 19.4.1989 and again on 15.9.1992. The applicant's case has indeed been already thoroughly and

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meticulously examined by the official respondents, ~~before~~^{and} the ACC in accordance with the legal provisions. In the circumstances of the case, the aforesaid observations of the Hon'ble Supreme Court in N.P. Dhamania's case (*supra*) are very relevant and fully applicable to the facts of this case. The strenuous arguments by Shri J.K. Srivastava, learned counsel, based on the judgement of the Supreme Court in Jankiraman's case (*supra*) would not appear to be applicable to the facts of the present case, particularly having regard to the observations of the Supreme Court in Dhamania's case (*supra*) which is also a case of obtaining ACC approval on DPC recommendations. We have also considered the other submissions made by the learned counsel but find no merit in the same and are rejected.

8. In this case since reasons have been assigned differing from the recommendations of the DPC of 1987, it would be a futile exercise to direct the respondents to make a third reference back to ACC and have further consultation with the UPSC in the matter.

9. The submission of the learned counsel for the applicant that the reasons recorded by the ACC must be communicated to him is also without any basis having regard to the answer of the Supreme Court to this very question in para 20 of the judgement in N.P. Dhamania's case, reproduced in para 6 above.

9. In the result, this application fails and is dismissed. No order as to costs.


(K. Muthukumar)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)