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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

Registration No. 108 of 1986

T.N.Seth

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Applicant

Versus

The Secretary, Govt. of India, Respondents
Ministry of Finance, Deptt. of
Revenue New Delhi & Another.

Present : 1. Hon. S.Zaheer Hasan, V.C.(J)
2. Hon. Ajay Johri, Member (A)

Judgement Delivered by Hon. Ajay Johri, Member(A)

This is a petition under Section 19 of the Administrative Tribunals Act, 1985. The petitioner retired as Superintendent Group 'B' in the Customs and Central Excise Department on 31.7.83. His case is that he was eligible for confirmation as Superintendent Group 'B' in 1979 but his Character Rolls were not put before the Departmental Promotion Committee and therefore he was not confirmed. As a consequence he lost in seniority and was not considered for promotion as Superintendent Group 'A' when the promotions were made in July, 1983. He, therefore, has come to the Tribunal praying for the following reliefs : -

- (a) Confirmation from 1.10.1978
- (b) Promotion as Superintendent Group 'A' from 11.7.1983, and
- (c) Consequential payments in respect of differential pay, leave encashment and gratuity etc. according to the revised rate of pay to which he was entitled.

2. The respondents' case is that the petitioner's ~~name~~ ^{name} ~~case~~ ^{case}

5

for confirmation came up in the month of September, 1979 but in the absence of his complete Character Roll he could not be considered by the Departmental Promotion Committee. Under the existing instructions the petitioner was required to submit a resume regarding work done by him during the period 1.4.78 to 31.12.79 to get his Character Roll written but as he failed to submit the same till the date of the meeting of the Departmental Promotion Committee, his Character Roll could not be initiated and put up before the Departmental Promotion Committee. Ultimately his Character Roll was initiated, reviewed and countersigned by the concerned authorities on 18.11.79 without the resume. Again in 1982-83 the Departmental Promotion Committee met for selecting candidates for promotion as Superintendent Group 'A'. The petitioner's records were also scrutinized by the Committee but his case could not be considered on the basis of overall performance and not on account of his non-confirmation.

3. The petitioner had argued his case himself. We have also heard the learned counsel for the respondents. The facts of the case are not in dispute. The petitioner argued that during the period 1978 to 1979 he was posted in the HQrs. office and his Character Roll could have been completed and if he failed to submit the resume he could have been reminded and the Character Roll could have been put up before the Departmental Promotion Committee and his case could have been considered. Since he was deprived of being considered by the Departmental Promotion Committee on account of non-availability of the C.R. for 1978

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he suffered by not having got his confirmation and thereby lost in seniority to those who were confirmed. In the result he also suffered his further promotion as Superintendent Group 'A' when the promotions were made in 1983.

4. A Confidential Report is intended to be a general assessment of work performed by a Govt. servant subordinate to the reporting authority. Such reports are required to be maintained for serving as data for comparative merit when the question of promotion or confirmation arises. These reports judge the performance and efficiency of officers in public service. Adverse entries, if any, are required to be communicated to put an officer on a proper line by pointing out his defects. Recording of Confidential Reports is in public interest and the superior officers are enjoined and duty bound to put down their subjective assessment of a public servant's conduct in the shape of a Confidential Report. The superior officers have therefore both a right and duty to write the Annual C.R. unless for some specific weighty reasons they choose to defer the same.

5. The Central Board of Excise and Customs, ^{Annex. CAI} New Delhi circular No.20/22/75-EC/SO(P) dated 8.6.76, on the subject of revised proforma for writing of Confidential Reports of various categories of officers of the Customs, Central Excise and Narcotics Department has been issued on the recommendations made by the Administrative Reforms Commission in its Report on Personnel Administration and certain

suggestions made by the staff side of the National Council. According to these instructions a brief resume not exceeding 300 words has to be written by certain category of officers (petitioner belongs to this category) on the work done by him bringing out special achievements. The resume has to be submitted to the reporting officer and has to form a part of the C.R. The C.R. has to be performance oriented and an objective assessment of the performance of the officers reported upon has to be made.

6. In the case of the petitioner it is observed that the C.R. was not written at the proper time with the result that his complete C.R. dossier was not available to the Departmental Promotion Committee when his case for confirmation came up for consideration. This resulted in non-confirmation of the petitioner. Normally a strict time schedule is prescribed for the various stages in the matter of writing of C.R.s and the adherence to this time schedule has to be watched by the concerned authorities. Even if the resume was not made available nothing was precluding the reporting officer to write the C.R. without the resume with appropriate remarks in the column meant for the same. However, in the petitioner's case it was chosen to delay the writing of the C.R. because the resume was not available. This is not considered a satisfactory and convincing action. The CR was completed on 18.11.79, without ^{of the} resume. If the Departmental Promotion Committee had to meet for considering confirmation of certain officers the C.R. Dossier of the concerned officer should have been put before the Departmental Promotion Committee to enable it to deliberate and arrive at a conclusion.

The case cannot be allowed to go by default or to linger on for the meeting of the next Departmental Promotion Committee to meet. It is also observed that there have been excessive gaps between the consecutive meetings of the Departmental Promotion Committee for consideration of the officers for confirmation.

After 1979, the next Departmental Promotion Committee only met in 1983. It should have been the duty of the Administration to keep a strict watch on the progress in the completion of the C.Rs at different stages and the matter should have been taken up with appropriate officers for seeing that delays did not take place and the records were kept up to date.

7. The non-presentation of the C.R. of the petitioner before the Departmental Promotion Committee on the plea of non availability of the resume can therefore not be accepted.

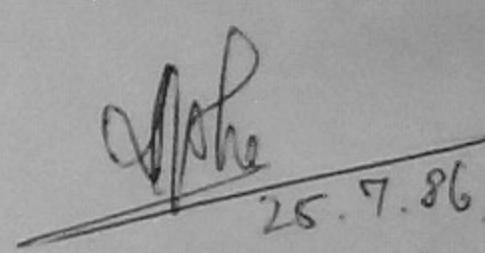
8. In regard to promotion to group 'A' Supdt's post, it is clearly the appointing authority who is the judge of merit and ability of the persons to be considered for promotion. What is to be ensured is that the depression of seniority due to non-confirmation in 1979 should not put the petitioner to a disadvantage. Promotion cannot be claimed as a matter of right. What is necessary is equality of treatment to eligible candidates since promotion is a condition of service within Article 309 of the Constitution.

9. We therefore direct that the petitioner's case should be considered for confirmation on the basis of the Confidential Report without a resume and if he satisfies the requirements he should be given confirmation

(9)

from the due date and if as a result any consequential benefits in the matter of seniority and promotion accrue he will be entitled to the same in accordance with the rules of the Department in such matters. Parties will bear their own costs.


(S. Zaheer Hasan)
Vice Chairman (J)


25.7.86
(Ajay Johri)
Member (A)

RKM
25.7.86