

6

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 203 of 1986

Vijay Kumar Applicant

Versus

Secretary, Central Board of
Excise & Customs, North Block,
New Delhi & Others. Respondents.

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

This is a petition under Section 19
of the Administrative Tribunals Act XIII of 1985.
The petition is against the order dated 4.2.1986
passed by the Central Board of Excise and Customs,
New Delhi rejecting the prayer of the applicant
for confirming him from a date earlier than the
one on which he has been confirmed. The applicant
was appointed as Sub Inspector in the Central
Excise in the then Collectorate of Central Excise,
Allahabad with effect from 11.9.1958. In 1971 the
post was upgraded to that of the Inspector. ~~and~~ All
eligible Sub Inspectors barring the applicant were
promoted in 1971. In March, 1972 the applicant was
also put on the upgraded post and given his original
seniority. In 1973 a Departmental Promotion Committee
was held and persons junior to the applicant were

- 2 -

confirmed w.e.f. 1.8.72 whereas the applicant was not confirmed from that date. He was not found fit for confirmation. During 1975 and 1977 the applicant was involved in Court cases but in these cases the applicant was not taken up and they were either withdrawn or the applicant was exonerated. The applicant thereafter agitated the question of his confirmation and he was informed on 12.1.1984 that he was confirmed w.e.f. 20.11.77 and he was shown in the seniority list as having lost about 60 positions from his original seniority. He represented against it on 6.2.1984 requesting for his confirmation from 1.8.72 when his junior was confirmed. But in August, 1984 he was informed that in the Departmental Promotion Committee held in 1973 he was not found fit for confirmation. In August, 1984 he represented to the Secretary, Central Board of Excise and Customs to restore his position but his representation was rejected. He has therefore sought relief that since he was never communicated any adverse remarks till the time when the Departmental Promotion Committee met in 1973 he should have been confirmed w.e.f. 1.8.72, in similar manner in which he was allowed to retain his seniority when he was put on the upgraded post of Inspector from the post of Sub Inspector.

2. The respondents' case is that the applicant was initially appointed as Sub Inspector. He was promoted to the grade of Inspector in 1972. His case for confirmation was first taken up in 1973 but he was not recommended for being confirmed as he was considered ' Not Yet Fit ' for confirmation in the grade of Inspector. Next Departmental Promotion Committee was convened in the year 1977-78 because during the period 1973 - 1977 there was a ban on confirmation and in the Departmental Promotion Committees held in 1977 and 1978 due to disciplinary proceeding pending against the ~~38~~ ³⁸ considered for ~~38~~ confirmation. However, consequent upon his exoneration in the said cases his case for confirmation was taken up in September, 1983 and he was found fit for confirmation and was confirmed w.e.f. 20.11.77 and his proper seniority was also given. The respondents have further contended that it was only after his exoneration that the applicant's case could be considered for confirmation. It was in 1969-70 that certain adverse remarks were given in his Confidential Reports and they were communicated to the applicant.

3. We have heard the learned counsel for both parties. The learned counsel for the applicant

(9)

contended that once the applicant was exonerated of the charges on account of which he was not considered by the Departmental Promotion Committees which were convened in 1977, 1978 and 1979 his confirmation by the Departmental Promotion Committee in 1984 w.e.f. November, 1977 should not result in losing his seniority to those who were confirmed by the Departmental Promotion Committees held in 1977 onwards. The learned counsel for the applicant conceded that the applicant had no case for confirmation from 1.8.72 as in the Departmental Promotion Committee held during 1973(74) he was considered as 'Not Yet Fit' and therefore he had no case. But in case any confirmations have been done during the period 1973 to 1977 the applicant being the senior most should not be deprived of his seniority by virtue of his case having been considered in 1984 on account of the disciplinary cases which were pending against him during 1977-78 from which he was ultimately exonerated. Exoneration of the applicant from the disciplinary cases puts him back in the position as if he was due for consideration by the Departmental Promotion Committee which met in 1977 first time after 1973-74. There are no papers to show the exact position of the seniority of the applicant vis-a-vis those Inspectors who were confirmed in 1977 and onwards. We are not sitting in judgement

against the Departmental Promotion Committee deliberations of 1973-74. The applicant was not considered fit for confirmation at that time. The Departmental Promotion Committee considers the performance of each of the candidates due for confirmation and comes to a conclusion as to who should be confirmed and who should not be confirmed. From the representation ^{or made} by the applicant in August, 1984 it would appear that he had represented against the deliberations of the Departmental Promotion Committee which was held in 1973-74 and which found him 'Not Yet Fit' for confirmation. According to him the findings of the Departmental Promotion Committee did not appear to be sound, proper and just and therefore he had prayed for these to be set aside. This representation was rejected by the competent authority and he was informed of the position vide Annexure placed at Sl.No.49 of his application.

4. We have already mentioned that we are not sitting in judgement against the deliberations of the Departmental Promotion Committee and therefore his being found 'Not Yet Fit' for confirmation in 1973 cannot be challenged. ~~by his application~~ However, as contended by the learned counsel for the applicant in case the applicant has been made to

lose his seniority on account of his delayed
~~not~~ ^{22nd June} confirmation which was ~~not~~ in 1984 with back date,
we direct that his seniority amongst those who
were due for consideration in 1977 which was the
first Departmental Promotion Committee held after
1973-74 should not be disturbed and in case he has
been put below ~~or~~ ^{22nd} those who were confirmed in 1977
thereby losing his seniority the ~~order~~ ^{22nd Seniority} should be
corrected. The respondents are therefore directed
^{22nd} to check on the seniority list issued as a result
of the Departmental Promotion Committee deliberations
of 1977 whether the applicant has been made to lose
his seniority or not. If his seniority has been
disturbed it should be restored to where he should
have been had he been considered by the 1977
Departmental Promotion Committee. The petition
is disposed of accordingly. Parties will bear
their own costs.

Yours
V.C.

3/3/87
A.M.

Dated the 31st March, 1987

RKM