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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.77 of 1987
(Writ petition No.12137/85)

G.N. Verma Applicant

Versus

Collector Central Excise & Customs
Allahabad Opposite Parties

Hon. Justice K. Nath, V.C.
Hon. K. J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

This case has been received by transfer of Writ petition No.12137 of 1985 from the Hon'ble High Court of Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985 for disposal.

2. The applicant has sought a mandamus to the opposite parties to promote him to the post of Supdt. Central Excise and Customs from due date.

3. The applicant G.N. Verma was confirmed as an Inspector of the Central Excise and Customs Department on 28.11.70. A chargesheet for misconduct was issued against him on 14.6.76. A Departmental Promotion Committee (D.P.C.) met in 1978 for promotion to the Selection Grade of Inspectors but in view of the pending proceedings he was not promoted. On 1.1.1980 several Inspectors junior to him were promoted as Selection Grade Inspectors.

4. Before the disciplinary proceedings on the Chargesheet dated 14.6.76 could be concluded, the applicant was served with another chargesheet dated 15.4.83. The proceedings of that chargesheet were dropped on 25.6.84 vide Annexure-4.

5. Shortly thereafter, on 19.7.84 a Censure order Annexure-2 was passed in the inquiry under chargesheet of 14.6.76. However, the applicant successfully appealed against the Censure Order which was quashed by the appellate authority in September, 1984 by Annexure-3.

6. On 1.9.84 the applicant was promoted as Selection Grade Inspector. The criterion of promotion was seniority subject to rejection of unfit. The applicant was given seniority as Selection Grade Inspector with effect from 1.1.80 when persons junior to the applicant had been promoted as Selection Grade Inspectors. However, subsequently the sealed cover regarding the applicant's case at the time of the Departmental Promotion Committee of 1978 for promotion as Selection Grade Inspectors, was opened. It was found that the said D.P.C. had found the applicant to be fit for promotion as Selection Grade Inspector. Consequently, he was given seniority as Selection Grade Inspector from the year 1978.

7. It may be stated here that at the time of the arguments, the learned counsel for the applicant contended that the applicant had been deprived of promotion as Selection Grade Inspector on account of the disciplinary proceedings on the chargesheet of 14.6.76 and that since he has been given seniority with effect from 1978 in consequence of opening the sealed cover, he should be given the consequential monetary relief for the post of Selection Grade Inspector. It is not possible to give any such relief because none was claimed in the Writ Petition. The only claim in the Writ Petition is promotion as Superintendent, Central Excise.

8. The Departmental Promotion Committee met in 1984 for promotion of Selection Grade Inspectors as Supdt. Central Excise. According to the applicant, his case was not considered

at all because of the proceedings pending under Chargesheet dated 16.4.83. Subsequently, on 7.1.85 some Selection Grade Inspectors who were junior to the applicant, were promoted as Superintendent vide Annexure-6 and Annexure-6A.

9. The applicant's case is that the opposite parties were in error in the year 1984 in so far as they failed to consider the applicant's candidature on account of the pendency of proceedings under chargesheet dated 16.4.83 which were ultimately dropped on 25.6.84 by Annexure-4, and that since on 1.9.84 the applicant had been promoted from the post of Inspector to the post of Selection Grade Inspector, he should also have been promoted to the post of Superintendent Central Excise because, at that time, the material available for promotion as Selection Grade Inspector was the only material available for promotion as Superintendent Central Excise.

10. The case of the opposite parties is that the promotion as Selection Grade Inspector on 1.9.84 was on the basis of three years A.C.Rs i.e. 1981, 1982 and 1983 and on the criterion of seniority subject to rejection of unfit, whereas the criterion for the promotion to the post of Superintendent was "merit" to be examined on the basis of five years A.C.Rs, hence the material relevant and considered for promotion to the post of Selection Grade Inspector was neither adequate nor relevant for promotion as Superintendent. It is further urged that the applicant's candidature for promotion as Superintendent was considered in the D.P.C. of 1984 but he was not found fit.

11. The learned counsel for the opposite parties has placed before us the record of the D.P.C. proceedings as also the Character Roll entries of several years. A perusal of the

Character Roll entries of each year from September, 1978 ending on 31st December, ~~of each year~~ indicates that except for the year 1981, he was never rated to be above "good". For the year 1981 the Reporting and Reviewing authorities rated him as "Excellent", but the next higher authority rated him as "Average". For the year 1983 the Reporting and Reviewing authorities rated him as "Good", but the next higher authority remarked him as "Not fit for promotion" and to be an 'Average' type of officer. For the year 1984 he was rated as adequate.

12. The submission of the learned counsel for the applicant in the face of this record is that in the preceding five years of 1984, the applicant had been assessed to be 'Excellent', 'Good' or 'Very Good' is not correct.

13. The record of the D.P.C. proceedings show that on 24/25.7.86 a Review D.P.C. had met to consider the D.P.C. reports of 1983, 1984 and 1985. For the year 1983 it was remarked that officers senior to him were graded as 'Good' whereas the applicant was not graded either as 'Very Good' or 'Excellent'. For the year 1984 and 1985, he was found as 'Not fit for promotion'. The D.P.C.'s assessment in the years 1986, 1987 and 1988 was the same i.e. "Not yet Fit".

14. It is plain, therefore, that the applicant's case for promotion as Superintendent had been considered at the appropriate time on the appropriate material by the D.P.C. and since he was not found fit for promotion he had not been promoted. We find no illegality, for these reasons, in the refusal of the Govt. to promote the applicant as Superintendent.

15. These are all the points in this case which, for the reasons recorded, must fail. Before we part this case, we may mention that at the fag end of the arguments when we examined

the reports of the D.P.C., we noticed that the Hon'ble Administrative Member of this Bench was the Chairman of the D.P.C. which examined the cases in the years 1986 and 1987. We invited the learned counsel for the applicant to state whether the applicant had any hesitation in concluding the hearing of this case before this Bench. The learned counsel for the applicant ^{said} ~~says~~ that he has no objection and the case may be concluded and decided by this Bench. That is how we have heard this case finally, and are delivering this judgement.

16. The application is dismissed; parties shall bear their costs.

(Signature)

Member (A)

OR

Vice Chairman

Dated the 19th July, 1989.

RKM