

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A. NO. 710 OF 1988.**

**~~TA. NO.~~**

**DATE OF DECISION** 15th November, 1994.

Shri M.C. Kaul, Petitioner

Mr. K.K. Shah, Advocate for the Petitioner (s)

**Versus**

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent (s)

**CORAM**

The Hon'ble Mr. K. Ramamoorthy, Admn. Member.

The Hon'ble ~~Mr.~~ Dr. R.K. Saxena, Judicial Member.

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

W

Shri M.C.Kaul  
Additional Collector,  
Customs & Central Excise,  
Vadodara.

...Applicant.

Versus

1. Union of India,  
(Through Secretary,  
Ministry of Finance,  
Department of Revenue,  
Govt. of India,  
New Delhi - 110 001.)
2. The Central Board of Excise & Customs,  
(Through Chairman,  
Central Board of Excise,  
& Customs, North Block,  
New Delhi - 110 001.
3. Shri R.K.Chandra,  
Joint SDR,  
CEGAT,  
New Delhi.
4. Shri S.K.Mishra,  
C.V.O. Central Board of Excise, &  
Customs,  
New Delhi.
5. Shri S.P.Srivastava,  
Directorate of Preventive Operations,  
New Delhi.
6. Shri B.G.Raju,  
Collector of Customs & Central Excise,  
Aurangabad.
7. Shri Virendra Singh,  
Collector-Customs (Preventive),  
Gujarat,  
Ahmedabad.
8. Shri Dalbir Singh,  
Deputy Director General,  
Narcotics ,  
Central Bureau, New Delhi.
9. Shri P.R.Venkataraman,  
Additional Director General (Training)  
Madras.
10. Shri J.N.Nigam,  
Collector of Central Excise & Customs,  
Baroda.
11. Shri S.K.Bhardwaj,  
Collector of Central Excise (Appeals),  
New Customs House, Ballard Estate,  
Bombay.
12. Shri V.K.Asthana,  
Collector of Central Excise (Appeals),  
P & C Course Building, Hirabaug,  
POONA.

(2) (3)

: 3 :

J U D G M E N T

O.A.NO. 710 OF 1988

Date : 15th Nov.1994

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

The application is in regard to giving an earlier date of promotion to the applicant. The facts of this case are as under : -

The applicant had joined as Class-I officer in the Central Excise and Customs Service during 1966 and after years of service had been due for promotion to the post of Collector, Customs, in 1987. A D.P.C. was held on 8th December, 1987 for drawing up a panel for nine anticipated vacancies. The post of Collector, Customs, is a merit selection post and for this purpose, the officers are graded according to the quality of their C.R.s. The officers are graded "outstanding", "very good" or "good" according to C.Rs. remarks. Officers in the higher group (according to the quality of C.R.s) get selected and the seniority comes only thereafter. Admittedly the present applicant was graded only as "good" and, therefore, he did not find himself included in the final list of officers selected. However, when this list was brought before the appointment Committee of the Cabinet which approves the posting, it chose to include one officer not recommended by the D.P.C. who was admittedly junior to the present applicant as the Cabinet Committee felt that the officer deserved a higher grading as per his C.Rs.

D

It is true that at the time of this D.P.C. meeting, the C.Rs of the present applicant suffered from some infirmities as some adverse C.Rs had not been communicated to him and when they were communicated, certain representations were made which resulted in certain changes in the C.Rs of the present applicant. It is admitted that after the C.R was later revised, the matter was again put before the A.C.C. who had earlier found to be just good. Even after the revised C.R., A.C.C. maintained its earlier stand that the officer merited only "good" grading and, therefore, did not alter its earlier decision whereby in addition to the D.P.Cs recommendations, they also included one officer, Mr. Raju, who was junior to the applicant, for promotion. In the subsequent meeting of the D.P.C however, the officer also got selected and was promoted on 17th March, 1990. It is the contention of the officer that he should have been promoted along with the earlier batch of officers. In any case, he should not have been excluded when Shri R.K. Raju, an immediate officer below him, was included.

3. We have gone through the D.P.C. proceedings in this regard. The post of Collector, Customs, admittedly is a selection post and the process of classifying according to the quality of C.Rs is an accepted position specially for senior postings. It is also clear that the Appointment Committee of the Cabinet is the ultimate sanctioning authority. The applicant himself does not challenge right of the A.C.C who set their final seal of approval during the arguments. In 1987 D.P.C. meeting

23 33

the officer did suffer on account of the fact that the C.Rs placed before the D.P.C were to some extent flawed, inasmuch as the C.Rs of 1984 and 1985 were called for re-review and certain additional<sup>2</sup> or favourable comments<sup>were</sup> ~~was~~<sup>2</sup> also made. Since, however, after this additional review had actually been carried out, the re-assessment was done by the D.P.C which assessment was also before the A.C.C., the applicant cannot have any grievance. After the error had been looked into and review made, inasmuch as the C.Rs remained the same and did not enable him to high~~x~~ grading as "very good", the officer cannot have a grievance for not getting included in the panel.

4. The counsel for the applicant has cited the case of the Supreme Court decide in Civil Appeal No. 3491 of 1983, dated 3 January, 1984, (IILN) as also the Supreme Court case in the Special Leave Petition (Civil) No. 15630 of 1985 dated on October 19, 1989, (1991) 15 Administrative Tribunals Cases 933, and the judgments delivered in O.A. 373 of 1991, decided on August 11, 1992, by Central Administrative Tribunal, Bombay, to bring out the fact that the adverse C.Rs if not communicated should not affect the promotion prospects. The ratio of these judgments have not been infringed since what these judgments require is the convening of a review D.P.C. to take into account the correct C.Rs which is what has been done in this case.

5. Another point was made that in drawing up a panel for 9 anticipated vacancies, the D.P.C had inflated the demand of vacancies since only three vacancies were filled

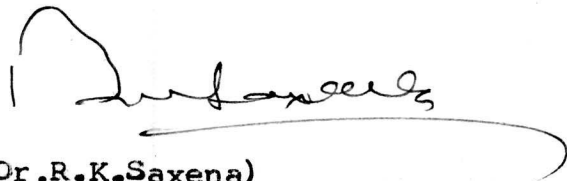
2


in by September 1988. The remaining six officers were promoted only on 1-2-1989. The counsel for the applicants contended that in providing nine anticipated vacancies the respondents seem to have clubbed vacancies of earlier years. They quoted the decisions of the Central Admn. Tribunal of New Delhi - 1987 (1988) 7 Administrative Tribunals Cases 372, Central Admn. Tribunal of Madras, II-1988(1) All India Services Law Journal, Central Admn. Tribunal, Cuttack, (1991) 17 Administrative Tribunals Cases, 811, to make the plea about wrong bunching of vacancies. We have not been able to find support in these judgments since the nine vacancies have been anticipated for the ensure<sup>ing</sup> year only. The delay in actual posting has been caused due to Court stay order. It is also seen that even otherwise, the nine appointments were made within a 18 months period which is the life period of the panel.

6. The applicant has joined the names of the officers who had superseded him as respondents in this application. While the applicant did accept the fact that as per the procedure "outstanding" and "very good" officers got selected in preference to their seniority, the applicant's main complaint seems to be about the inclusion of the officer immediately below him into a higher category of "very good" officers and action taken specifically by the A.C.C in over-ruling the grading given by the D.P.C. As stated earlier, the right of the A.C.C. to over-rule the D.P.C's recommendation is an accepted fact as the A.C.C. having taken this view after an assessment of the C.Rs, there is not much to be said

about this process. The respondents have also taken care to see that the A.C.C. was again apprised of the changed profile of the C.Rs whereafter also the A.C.C. maintained its earlier stand. The Tribunal is not an appellate authority in that sense with authority to substitute its judgment on the assessment based on the review of the C.R.

7. It is also seen that the officer has also been included in the next list. The counsel for the applicant made this point that this grading could affect further promotion prospects. We do not see much merit in this argument inasmuch as the further promotions will also be based on merit and it is not the seniority decision which is going to materially affect promotion even in future, but the quality of C.Rs as in the present case. The selection in this case is a merit selection based on the assessment of recorded C.Rs. After going through the D.P.C. proceedings, we have seen that the procedure has been followed as per the rules in drawing up the vacancies and in consideration of the candidates, the process adopted to classify the C.Rs according to the merits is also as per law. We, therefore, do not see any reason to interfere with the decision taken. The petition, therefore, is dismissed. No order as to costs.

  
(Dr. R.K. Saxena)  
Member (J)

  
(K. Ramamoorthy)  
Member (A)

ait.