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IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. /228/89
T.A. No.

DATE OF DECISION 15-9-1993

Mr. Balkrishna G. Deshpande Petitioner

P. IN P Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Mr. Akil Kureishi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt : Judicial Member

The Hon'ble Mr. M.R. Kolhatkar : Administrative Member.

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

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Mr.Balkrishna Govind Deshpande,
 Age-54 yrs., Profession-Service,
 residing at-Block No.10, Sahyog Nagar,
 Tithal Road,
 Valsad-396001

..Applicant.

Advocate : P IN P

versus

1. The Hon'ble Collector,
 The Customs & Central Excise,
 Collectorate,
 Customs & Central Excise Office,
Bardoa.

2. The Union of India,
 Notice to be served on the
 Secretary, Ministry of Finance,
 Department of Revenue,
 North Block Secretariat,
New Delhi-110 001

3. Principle Collector,
 Central Excise & Customs,
 Central Excise Department,
 Promotion/Upgradation,
 C/o Customs & Central Ex. Collectorate,
 Race Course Circle,
Baroda.

...Respondents.

Advocate Mr.Akil Kureshi

JUDGEMENT

O.A./228/89

Date : 15-9-1993

Per : Hon'ble Shri R.C.Bhatt,

Judicial Member

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 Applicant in person. Mr.Akil
 Kureshi, learned advocate for the respondents is present.

2. This application under section 19
 of the Administrative Tribunals Act, 1985 is filed by

by the applicant seeking the reliefs as under :-

(A) . Be pleased to admit and allow this application,

(B) . Withhold entire promotion/upgradation :
Be pleased to withhold, restrain and stop implementation of the entire promotion of 143 Superintendents as shown in Annexure-A as it is arrived at by arbitrary, selective, partial and subjective way and that respondents have acted beyond the jurisdiction, beyond authorisation, permission, approval and sanction, arising and emanating from Govt. of India's sanction order no.31/89, dated 21/3/89. Above said upgradation/promotion by withheld and be allowed to be implemented or acted upon only when applicant's name is included in the list of 143 or 154 Superintendents, which the respondents are entitled to upgrade.

(C) . Applicant be included in promotion/upgraded list of Superintendents.
Be pleased to pass necessary orders, directing and commanding the respondents to include the applicant's name in the list of Superintendents at Sr.No.41 on page-2 of Establishment order No.129/89, dated 19/5/89 of the list of Superintendents.

(D) . Declaration that the applicant is entitled to upgradation/ promotion.
Be pleased to pass order and declaration that the applicant is entitled to upgradation and promotion for the post of Superintendent of Customs & Central Excise in Baroda Customs and Central Excise Collectorate, in the present list of promotion ad declared in May, 1989 vide Annexure -A, emanating from Govt. of India's decision of 21/3/89. (Annexure-B).

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3. The case of the applicant is that he is entitled to be shown in the list, Annexure A-1, dated 18th May, 1989 by which the Inspectors of Customs and Central Excise of combined cadre of Vadodara/Ahmedabad / Rajkot Collectorate were promoted to the grade of Superintendent, Grade-B against upgraded posts. According to the applicant, he is entitled to be shown in that list at serial no. 41 and the respondents have erred in showing the list of the 143 Superintendents without inclusion of his name. It is also the case of the applicant that on the list of transfer shown in that list, at page-5 of Annexure-A-1, he is entitled to be placed between Sr.No. 40 and Sr.No.41. i.e. between the name of Mr.Y.D.Saiyed and Mr.H.B.Acharya. The applicant is shown at the place 238th. According to him, he is senior to 239th Mr.H.B.Acharya but even then, he is completely dropped out from the list, which is illegal and erroneous. The case of the applicant is that he is entitled to promotion to the post of Superintendent and upgradation, that he has already completed 32 years of service, that he was given promotion as selection grade Inspector in the year 1984, that he has been awarded many rewards. It is contended by the applicant that by upgradation, the senior most 143 Inspectors were to be upgraded and not by the arbitrary, subjective and selective way in which the respondents have acted. According to him, he has a fundamental right for promotion and upgradation which is violated. The Government of India has only sanctioned upgradation and this ought to have been implemented literally. He has alleged in the application that the Government of

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India Sanction Order No.31/89, dated 21st March, 1989

was a
vide Annexure-A-2, what was called for upgradation
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and not promotion. The applicant has in para-6 (i) to
6 (xv) mentioned the grounds on which he challenges
the impugned order.

4. The applicant has sent written submissions and has waived oral arguments. It is mentioned in his written submissions that the action of the respondents in withholding his promotion of the post of Superintendent (B), was not only arbitrary but against equity justice good conscience and it has done a great harm to his 30 years career in the department.

5. We have considered all the grounds mentioned in his application and the documents annexed with the application and his written arguments.

6. The respondents have filed detailed reply. We have heard Mr.Kureshi. He submitted that at the time of selection of Superintendent, Grade-B, the DPC did not find the applicant fit for promotion and accordingly he was not promoted to the grade of Superintendent- Grade-B. He submitted that the impugned order in question is a promotion order dated 18th May, 1989, promoting 143 Inspector to the grade of Superintendent Grade-B issued as a result of DPC, held on 16/17/5/1989 in which the applicant was duly considered for appearing before the DPC along with others for the purpose of selection to the post of Superintendent, Grade-B but he was not found fit for promotion by the DPC and hence, he was not promoted to the post of Superintendent-Grade-B.

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6. Examining the application of the applicant, it appears that the applicant has mixed up issue of promotion and upgradation. He wants to be upgraded and promoted in selection post without being found fit by the DPC. The applicant has alleged in his application that he is entitled to Sr.No.41 in the select list, merely on the ground of his seniority in the Inspector cadre. There is no substance in this allegation because serial numbers in selection list, according to the respondents are given as per the grading/ findings of the DPC and therefore, merely because the applicant is senior to Mr.H.B.Acharya in the Inspector grade list, he cannot automatically be put senior in the selection list of Superintendents. The main reason for non promotion of the applicant to the post of Superintendent, Grade-B, is that he was not found fit for promotion by DPC and hence, he is not entitled to be placed at Sr.No.41 in the selection list.

7. So far the OM dated 10th March, 1989 received under Ministry's letter dated, 3rd April, 1989 is concerned, the DPC had fixed the bench mark for the purpose of giving categorisation. The case of the applicant was put up ~~for~~ before DPC, held on 16/17/5/1989 for promotion to the Grade-B, Superintendent on selection basis, but the DPC found him unfit for promotion to the post of Superintendent, Grade-B. The applicant was promoted to the grade of Inspector (SG) in the year 1984 as per the DPC held on 24th August, 1984 because it was a non selection post for which promotion was made on seniority ~~and~~ fitness basis, but so far as the case of

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Inspector for promotion to the post of Superintendent, Grade-B, is concerned, the directions as per the OM dated 10th March, 1989 under Ministry's letter, 3rd April, 1989 were followed for promotion. We, therefore, hold that the application is without any merits and there is no illegality committed by the respondents in not showing the applicant's name in the impugned list.

8. The learned advocate for the respondents has produced before us the letter dated 26th August, 1993 along with the minutes of the DPC held on 3rd December, 1990. (i.e. after the 17th May, 1989) where he was found fit for ~~xxx~~ promotion to the grade of Superintendent- Grade- B by DPC and accordingly, he was promoted as Superintendent-Grade-B, by order dated 1st February, 1991. In the result, we pass the following order.

9.

ORDER

The application is dismissed with no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Administrative Member

R.C.Bhatt
(R.C.BHATT)
Judicial Member

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