

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 463 OF 1992.
~~Ex. No.~~

DATE OF DECISION 9-11-1993.

Shri R.M. Pathan, Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. K.A. Dave, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. M.R. Kolhatkar, Admn. 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 ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Shri R.M. Pathan
L/8/2, Officers Colony
Opp. Police Stadium
Christi Marg, Shahibaug,
Ahmedabad.

..... Applicant.

(Advocate: Mr.P.H. Pathak)

Versus.

1. Union of India
Notice to be served through
Secretary, Finance Deptt.,
Govt. of India, New Delhi.
2. Asstt. Collector Central Excise
Jivabhai Chambers,
Div. 2, Ahmedabad.
3. Asstt. Collector Central Excise
Sayajigauj Headquarter Branch,
Baroda.

..... Respondents.

(Advocate: Mr. K.A. Dave)

J U D G M E N T

O.A.No. 463 OF 1992

Date: 9-11-1993.

Per: Hon'ble Mr. M.R. Kolhatkar, Admn. Member.

Heard Mr. P.H. Pathak, learned advocate for the applicant and Mr. K.A. Dave, learned advocate for the respondents.

2. This is an application under section 19 of the Administrative Tribunals Act. The applicant has been working as L.D.C. in Excise & Customs organisation since 5.3.1958 and was confirmed as L.D.C from 2.11.1961 He was promotēd as officiating U.D.C from 2.3.1967 and then his case was referred on 4.11.1969 to D.P.C for confirmation in the cadre of U.D.C. The findings were

..... 3/-

kept in sealed cover. The sealed cover procedure was also adopted for the DPC held on 8.2.1971. The applicant's case was considered by DPC on 8.3.1974 which did not find him fit for confirmation. The applicant's case came up for further review before the DPC on 28.2.1977. The DPC did not find the applicant fit for confirmation in the post of UDC as well as retention in the grade and therefore he was reverted vide order dated 5.4.1977. Against this order of reversion he made a representation on 19.5.1977, which was rejected by the Central Board of Excise & Customs on 8.6.1979. Thereafter he filed a Special Civil Application No. 1949/80 before the Gujarat High Court on 15.9.1980. The Gujarat High Court in C.A.No.2081/83 in Special Civil Application No. 1943/80 directed the Board to treat the petitioner's representation dated 19.5.1977 as an appeal and the Gujarat High Court by its subsequent order dated 20.6.83 directed the Board to dispose of the appeal on or before 31.7.1983. The Board accordingly disposed of the appeal on 29.7.1983 by setting aside the reversion order dated 5.4.1977. The case of the applicant was referred to the DPC by circulation of papers. The DPC which met on 31.1.1987 found the applicant fit for confirmation in the grade of UDC and he was confirmed as UDC with effect from 1.1.1984 by the order issued on 5.2.1987. The

applicant represented against this decision on 30.7.1987, which was rejected on 2.5.1988. It appears that the applicant approached the High Court again by filing C.A. No. 1377/88 on 20.7.1988 which was disposed of by the High Court by its order dated 30.10.1992 directing the applicant to approach the appropriate forum. The applicant has approached this Tribunal on 3.11.1992 in which he has prayed the following relief.

"VII. Relief sought for:

In the abovementioned facts and circumstances of the case, the applicant pray :

- (A) The Hon'ble Tribunal be pleased to direct the respondents to grant the applicant all the consequential benefits including fixation of salary, seniority and promotion etc. of the applicant as the order of reversion is quashed and set aside by the appellate authority and direct to grant consequential benefits and further direct the respondents to pay 18% interest on the arrears, to the applicant as the same is illegally withheld by the respondents.
- (B) Be pleased to direct the respondents to grant all promotional benefits whatever is granted to Mr. Vyas who was promoted as UDC with the applicant, with retrospective effect and grant 18% interest on the monetary benefits.
- (C) Be pleased to declare that there was no jurisdiction available to the respondents for non granting the consequential benefits to the applicant, after quashing and setting aside the order of reversion by the appellate authority and when the DFC has found him fit.
- (D) Be pleased to declare that when the order of reversion is set aside, the applicant is entitled to get the promotional benefits etc. from the retrospective date and during the

reversion period the applicant cannot be deprived of the benefits of promotional avenue due to the illegal reversion order by the respondents.

(E) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost."

2. The basic contention of the applicant is that the notional date of confirmation fixed by respondents viz., 1.1.1984 was wrong and that he ought to have been confirmed from the date when one Mr. Vyas who was promoted as UDC at the same time as the applicant and who had the same seniority as UDC has been confirmed. This Mr. Vyas has reportedly earned further promotions in various positions. According to the applicant, he should be given the salary, seniority and promotions on the basis of deemed date of confirmation as UDC with effect from the confirmation of Mr. Vyas. date of / Mr. Vyas has not been cited as a party since the applicant does not question orders issued about Mr. Vyas but cites then by way of analogy.

3. The respondents have filed a written statement. Their contention is that there were several departmental enquiries against the officer and there were adverse entries in the C.R and action taken by the department in giving him the deemed date of confirmation viz., 1.1.1984 was according to rules. The findings of the DPC circulated under memorandum dated 11.3.1986 at Annexure T are as below.

"The punishment of stoppage of one increment without cumulative effect remained upto 1983. However, his two CRs of 1983 and 1984 are Good. After he gets another Good CR of 1985, he will be eligible for confirmation as UDC."

(It was clarified subsequently by the advocate for the original respondents that the reference to "stoppage of one increments with cumulative effect is a misprint, it should read stoppage of one increment without cumulative effect.) As the nature of the proceedings against the applicant and the adverse remarks was not clear, we had asked the department to produce additional documents which were produced by them on 21.9.1993 and on 29.10.93 respectively. From these additional documents it is clear that in March 1975 an order-in-appeal was passed in connection with the case of unauthorised occupation of certain premises in which the original penalty of reduction in grade of LDC at Rs. 110/- etc. was reduced to that of stoppage of one increment for a period of one year without any cumulative effect vide Annexure 'U'. It is noted that the original order imposing the penalty was dated 11.7.1972. Therefore, the effect of this order in appeal is that the penalty imposed on 11.7.1972 gets reduced to the penalty of stoppage of one increment for a period of one year without cumulative effect, the penalty imposed in appeal relates back to original date and the effect of the penalty gets wiped out one year

after the date of penalty namely on 11th July, 1973. At Annexure 'V' is the communication dated 8th May, 1977 which intimates the adverse remarks in his C.R for the period 1976-77. At Annexure 'X-4' is an order in appeal dated 4th May, 1983 which relates to certain proceedings under Conduct Rules regarding bigamy which has the effect of confirming the penalty of stoppage of one increment without cumulative effect on the applicant which was imposed on review on 29.4.1982 of the original penalty of warning imposed on 30th April, 1981. The effect of the order in appeal therefore, is that the original penalty of warning gets converted into stoppage of one increment without cumulative effect, as from 30th April, 1981. The effect of the penalty would be wiped out after one year namely 30th April, 1982.

4. One of the contentions of the applicant is that the applicant's case is on all fours with that of Mr. Vyas and whatever benefits have been earned by Mr. Vyas should be given to him. This contention is not acceptable because Shri Vyas's case would be decided on the basis of his own record and we have no material before us relating to the case of Shri Vyas nor is he a party before us. The crucial question is however/that of the effect of the cancellation of the reversion order of the applicant passed by the Board

on 29.7.1983 which stated that reversion order dated 5.4.1977 is set aside. We therefore wanted to know from the respondents as to why the case of the applicant was not considered by the department for confirmation as UDC with reference to this date. The contention of the department is that the effect of the penalty in departmental enquiry continued upto March 1976. He had adverse C.R.in 1976-77. Under the Rules an official is required to earn three Good C.R's consecutively to be considered for promotion. These three C.R's in question are C.R's for the years 1977-78, 1978-79 and 1979-80. He could have been considered by the DPC which had before it the C.R for 1979-80 onwards. However, the DPC could not consider his case because the subsequent departmental enquiry came in the way. As minutes of DPC quoted earlier stated, the effect of the penalty of stoppage of one increment without cumulative effect continued upto 1983 hence he could not have been considered for confirmation prior to 1.1.1984. The department has therefore rightly confirmed him from 1.1.1984. The department has also stated that the applicant has subsequently earned promotion as Deputy Office Supdt. level-II from 4.2.92. The applicant has already retired in February 1993 and therefore the question of any further promotion does not arise.

5. We do not accept the contention of the respondents that the applicant could not have been considered for confirmation as UDC before 1.1.1984. The department appears to have proceeded on ^a /wrong appreciation of the situation. The penalty in connection with the departmental enquiry relating to premises can not be held to be operative till end March 1976 as wrongly assumed by the department. The effect of the penalty by the doctrine of "relation back" expires on 11th July, 1973.* We have already noted that the applicant was considered and held to be unfit for promotion by the DPC which was held on 18.3.1974. Apparently DPC proceeded on a wrong assumption as to the operative period of penalty. This reasoning also applies to the subsequent penalty which, as we observed, was reviewed in appeal on 4.5.1983 but by the doctrine of "relation back" it is required to be held to have effect from 30.4.1981 and its effect expires on 30.4.1982 and not at the end of 1983 as wrongly assumed by the department.

6. Secondly the applicant in his rejoinder dated 30.3.1993 has pointed out that he had made representation on 21.8.1973 against adverse remarks communicated to him on 10.7.1973, but he had not till the date of his representation to the Board that is to say, till May 1977 received a reply. Subsequently also adverse remarks were communicated on 3rd July, 1976, against which he made

representation (date not mentioned) but no reply was received. The position is now well settled that adverse remarks against which a representation is made are not be taken into account so as to deny promotion in case the adverse remarks are not examined and reply sent to the person concerned. This point also needs to be kept in view by the department.

7. In view of the above observations we dispose of this application by issue of following directions.

ORDER

The application is partly allowed. The respondents are directed to consider a revised deemed date of confirmation as UDC in favour of the applicant in place of 1.1.1984 keeping in view the observations made by us earlier namely, relating to the proper counting of period of effect of penalty imposed on the applicant on two occasions which have been brought to our notice and the observations about unreplied adverse remarks not being held against Applicant. On this basis, the review DPC's should be held from the period 18.3.74 onwards, that being date when the applicant's case was considered by the DPC, which did not find him fit for confirmation which finally resulted in reversion on the basis of DPC of 28.2.77. If the department, on the basis of the recommendations of the notional review

DPC's held from 1974 onwards is in a position to give to the applicant a deemed date of confirmation as UDC earlier to 1.1.1984, the appropriate orders be passed. On the basis of this revised deemed date of confirmation the department should also calculate the consequential benefits to which the applicant would be entitled in terms of salary, seniority, promotion etc. till the date of the retirement of the applicant and pay the same to him. A speaking order should be passed on the basis of the recommendations of the review DPC's within four months of the receipt of our order. The department should take prompt action to convene the notional review DPC's in view of the fact that the applicant has already retired and in view of the time limit of four months fixed by us for finalisation of the case.

8. Application is disposed of accordingly. No order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member(A)

R.C. Bhatt

(R.C. Bhatt)
Member(J)

vtc.

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9-11-93

DR (J) Path
9-11-93

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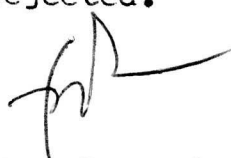

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STEP/94

DR (J) Path
5-11-94
6/2
7/4

| Date | Office Report | ORDER |
|---------|---------------|--|
| 15-6-94 | | <p>Objections to the M.A. regarding verification clause has still not been removed even though notice thereof ^{was} given in the notice board. Mr.K.A. Dave for the respondents not present. M.A.St.294/94 is rejected.</p> <p> (Dr.R.K.Saxena) Member (J)</p> <p> (K.Ramamoorthy) Member (A)</p> <p>vtc.</p> |

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