

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION No. 38 of 1990.

Date of decision :July, 3, 1990.

Tarsisius Lakra, aged about 39 years, son of late Christopher Lakha, at present working as Inspector, Central Excise and Customs, Rajeswar Vihar, Bhubaneswar-4, District: Puri.

.... Applicant.
- VERSUS -

1. Union of India, represented through its Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Principal Collector (East Zone), Central Excise & Customs, Customs House, 15/1, Strand Road, Calcutta-1.
3. Collector, Central Excise & Customs, Orissa, Bhubaneswar, Dist: Puri.
4. Additional Collector (P&E), Central Excise, Office of the Collector, Central Excises & Customs, Orissa, Bhubaneswar.
5. Shri Ramesh Chandra Chowdhury, at present working as Superintendent Group 'B', Rourkela-III Range, Central Excise, At/Po: Rourkela, District: Sundargarh.
6. Shri Kailash Pati Patra, Superintendent Group 'B', Central Excise, Rajgangpur Range, Rajgangpur, District: Sundargarh.

.... Respondents.

For the applicant

: M/s. Devanand Misra, Deepak Misra, R.N. Naik, A. Deo, B.S. Tripathy, Advocate

For the respondents.

: Mr. P.N. Mchapatra, Additional Standing Counsel (Central).

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

P.M.

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? **yes.**
3. Whether Their Lordship's wish to see the fair copy of the judgment ? Yes.

JUDGMENT

B.R. PATEL, VICE-CHAIRMAN The applicant of this case is an Inspector of Central Excise & Customs under the Collectorate of Central Excise and Customs, Orissa. He has prayed for promotion in one of the two vacancies which were filled up by promotion of Respondent No. 5 and 6. The relief sought by the applicant are issuance of a direction by the Tribunal for quashing the order of promotion of Respondent No. 5 and 6 and issuance of another direction to Respondent Nos. 1 to 4 to convene a meeting of the Departmental Promotion Committee (D.P.C.) in respect of all the vacancies occurring in a single calendar year. The Respondents in the counter affidavit have maintained that by virtue of the Circular F.No.A32012/1/89-Ad.-II.B. dated 29.3.89 vide Annexure-R-2, from 1.4.89 onwards D.P.C. meetings should be held every financial year and as such the D.P.C. meetings were held in the financial year 1989-90. They have further maintained that one of the vacancies belonged to general category and the other was earmarked for SC and ST Posts by virtue of the 40 point roster but as no suitable SC candidate was available a proposal for dereservation was sent

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to Government and pending the Government order one of these Respondents was appointed on ad-hoc basis. Ultimately Government approved the proposal of dereservation and the promotion of the respondent~~s~~ ^{was} ~~was~~ regularised.

2. We have heard Mr. R.N. Naik, learned Counsel for the applicant and Mr. P.N. Mohapatra, learned Counsel for the Respondents and perused the relevant papers. Admittedly one of the posts was earmarked for a SC candidate. Mr. Naik by has contended that more than one D.P.C. meeting was held in the financial year 1989-90 to consider cases of promotion for the vacancies which arose from time to time in that year and that if all the vacancies were clubbed and the cases of all eligible candidates were considered against them the applicant would have had a chance of being considered for promotion. According to him as the vacancies were not clubbed the consideration zone became narrow and the applicant who occupied Sl. No. 49 on the seniority list could not come up for consideration. Mr. Mohapatra on the other hand, has brought to our notice the O.M. No. 22011/12/85-Estt (D) dated 16.6.86 of Ministry of Personnel, P.G. Pensions (Department of Personnel and Training) vide enclosure to Annexure-R-2. This circular lays down that there should be a separate D.P.C. which should consider unanticipated vacancies which subsequently arose in case a DPC had already met for the regular vacancies. It further lays down that ~~where~~ due to inadvertence or negligence of the Department some vacancies ^{had} ~~were~~ not been included in the list of vacancies for consideration of D.P.C. a review

Ans

D.P.C. should be held.

3. Admittedly, the D.P.C. met in June, 1989 and considered **cases** for promotion to the two vacancies which were anticipated at that time. The D.P.C. met again in January, 1990 to consider the promotion of candidates for two more vacancies. Mr. Mohapatra pointed out that these two vacancies arose out of the sudden demise of an incumbent and the **dismissal** of an officer as the result of a **Disciplinary** proceedings and as such could not be anticipated earlier. We agree with Mr. Mohapatra and hold that the D.P.C. held for consideration of cases of officers for filling up these vacancies was in order. ^{in view of the O.M. dated 16.6.86 of the Ministry of Person in charge above} The D.P.C. met again in February, 1990 to consider cases for promotion against five vacancies. According to Mr. Mohapatra these five vacancies arose because of the **promotion** of five Superintendents of Excise and Customs of Group 'B' to the rank of Superintendents Group 'A'. As group 'A' is an All India Cadre and Group 'B' is a Collectorate cadre it was not possible for Respondents 2 and 3 to anticipate these vacancies. We do appreciate the submission made by Mr. Mohapatra. Since Group 'A' Posts belong to All India Cadre, it will not be possible for the Collectorate to anticipate in June, 1989 the vacancies that arose in February, 1990. The D.P.C. met in February, 1990. ^{There cannot be therefore any objection to holding the D.P.C. meeting which was in order.} We have no reason to hold that the procedure followed in holding D.P.C. meeting has been **irregular**.

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4. In view of what has been stated above, we are unable to accept the contention of Mr. Naik, that there should have been only one DPC meeting for all the vacancies that occurred in 1989-90. We are also unable to agree with him that the period for which the vacancies should count would be the calender year and not the financial year in view of the circular dated 29th March, 1989 referred to above. We find therefore no merit in the application which stands dismissed. Parties should bear their own costs.

Alka Patel
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MEMBER (JUDICIAL)

Ambedkar
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VICE-CHAIRMAN

