

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

For admission
Rath Bench
 1312

10. 19. 03. 2001

As per request of Mr. A.C. Rath, learned counsel for the petitioner adjourned to 26.03.2001 as a part-heard matter.

J. V. M.
 vice-chairman
 19/3

Member (J.)

For admission
 To be listed
 after part-
 heard matter.
Rath Bench
 1313

11. ORDER DATED 26.3.2001.

Heard Mr. A.C. Rath, learned counsel for the applicant and Mr. A.K. Bose, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

2. In this Original Application, the applicant has prayed for a direction to the Respondent no. 2 the Collector of Central Excise and Customs, Bhubaneswar to consider regularisation of the applicant in the grade of Inspector of Central Excise and Customs, w.e.f. 16-8-1982 by which date *s.d.* he became eligible for such consideration in terms of the circular dated 4-2-1981 (Annexure-2) and the order dated 27-4-1982 (Annexure-3). He has also asked his for consequential re-fixation of seniority.

3. Respondents have filed counter opposing the prayers of applicant and applicant has filed rejoinder. Private Respondents were issued with notice but they did not appear or file counter.

4. For the purpose of considering this petition it is not necessary to go into too many facts of

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this case. Admitted position is that the applicant joined as Upper Division Clerk under the Respondents on 16.8.1977. It is also the admitted position that according to the Rules prevalent then for filling up of the post of Ordinary Grade Inspector, 25% of the posts were required to be filled up by promoting UDCs & Stenographers with five years of service and women searchers with seven years of service. It is also the admitted position that due to nonavailability of eligible officers Department of Revenue, Govt. of India issued instruction on 4.2.1981 at Annexure-2 indicating that UDCs and Stenographers with four years of regular service and lady searchers with six years of service in the grade may be considered for adhoc promotion. In other words, for this adhoc promotion the requirement of service experience was reduced by one year for all the ~~deserving~~ ^{feeder groups.} ~~Govt.~~

In para-2 of this circular, it has been specifically mentioned that when adhoc promotees became eligible for regular promotion in accordance with provisions of Recruitment Rules (Annexure-1) they should be considered afresh for promotion by the duly constituted DPC. It was also stated that such consideration should be done in such a manner that adhoc promotees are to be considered and promoted on regular basis before completion of adhoc period of service in the grade of Inspector. In pursuance of this order, the applicant alongwith some others were given adhoc promotion to the post of Inspector in order dated 27.4.1982 (Annexure-3). It is also admitted that the applicant completed five years of service as UDC on 16.8.1982. Applicant's grievance is that he was not regularised as Inspector from 16.8.1982 but some other persons

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 who were given adhoc promotion alongwith him ;
 Girish Ch.Behera,Stenographer was regularised w.e.f.
 1.12.1982. Applicant has stated that Shri Gourahari
 Patnaik and Shri K.C.Parida were regularised w.e.f.
 9.9.1983 but the case of applicant was ignored. He
 filed representation but he was advised that the
 matter is pending before the Hon'ble High Court
 and the Tribunal and the applicant was advised to
 wait. But as no favourable order was passed, the
 applicant has come up in this Original application
 with the prayers referred to earlier.

5. Respondents,in their counter,have stated
 that the applicant's case for regularisation was
 considered by the Departmental Promotion Committee
 and he was regularised w.e.f. 13.5.1984 in the
 order at Annexure-4. Respondents have stated that
 Girish Ch.Behera and two others mentioned by the
 applicant were much senior to the applicant and
 they were regularised in their turn. Respondents
 have also stated that the applicant was given
 regular promotion in the year 1984 but he has
 come up in this Original Application only in the
 year 1994 after a passage of morethan ten years and
 therefore, this Original Application is barred by
 limitation.

6. we have considered the pleadings of the parties
 and the submissions made by Mr.Rath, learned counsel
 for the applicant and Mr.A.K.Bose, learned Senior
 Standing Counsel for the Respondents carefully.
 Admittedly in order at Annexure-2 it was directed
 that persons who have been given adhoc promotion to the
 post of Inspector by relaxing the minimum service
 experience by one year should be considered for regular

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promotion to the rank of Inspector even before they complete adhoc period of one year. It was also indicated clearly in this circular that cases of such adhoc promotees should be considered afresh for promotion by the DPC. From this it is clear that DPC has to consider the cases of such adhoc promotees for promotion and this must be done in accordance with rules. Respondents have stated that none of the persons who are junior to the applicant were given regular promotion before the applicant. This contention has ~~not~~ been denied by applicant in his rejoinder. Admittedly, the circular at annexure-2 provides for consideration by the DPC before completion of one year of adhoc promotion and such consideration has to be made in accordance with the rules. Applicant can not claim that he should be given promotion earlier than his seniors and he that in effect has acquired a right to supersede his seniors. In view of the above as the applicant has been promoted in his turn according to his seniority in the feeder grade we hold that no injustice has been done to the applicant. Moreover, if the applicant has any grievance with regard to his regular promotion in May, 1984 he should have approached the Tribunal much earlier. Applicant has no doubt stated that he has filed representations and he was advised to wait but he has not enclosed either copy of the representation nor the order of the Departmental authorities advising him to wait.

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of the order
dt. 26.3.01
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both counsel

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7. In consideration of this we hold that the application is barred by limitation.

8. In view of the above, we hold that the applicant is not entitled to any of the reliefs as claimed by him in this Original Application, and the Original Application is accordingly rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26/3/2001

KNM/CM.