

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.415/96

CORAM Monday, this the 5th day of January, 1998.

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

M.P. Bipinchandran,
S/o Late R. Prabhakaran Pillai,
Inspector of Central Excise,
Trivandrum - II Range,
Thiruvananthapuram.
Residing at Thiruvananthapuram.

By Advocate M/s K.P. Dandapani & Sumathi Dandapani.

..Applicant

Vs.

1. Union of India
represented by Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
2. The Secretary,
Central Board of Customs & Excise,
New Delhi.
3. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
Kochi -18.

By Advocate Mr T.P.M. Ibrahim Khan, Sr.CGSC.

..Respondents

The application having been heard on 17.12.1997,
the Tribunal delivered the following on 5.1.1998.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A4 dated 30.8.95, to declare that he is entitled to get the benefits of past service with effect from 12.6.79 for the purpose of seniority and promotion irrespective of the transfer to the Commissionerate of Cochin, and to direct the third respondent to consider him for promotion to the post of Superintendent on ad hoc basis counting the date of service in the grade of Inspector of Central Excise from 12.6.79.

2. Applicant is at present working as Inspector of Central Excise in Trivandrum Division. He was initially recruited in the post through direct recruitment quota. Based on an examination conducted by the Staff Selection Commission in the year 1977, he joined in the Bombay Collectorate on 12.6.79. On 12.5.83 he applied for transfer to Cochin Central Excise Collectorate and was transferred as per Order dated 23.12.88. He joined Cochin Collectorate on 3.1.89. The post of Inspector of Central Excise is the feeder cadre to the post of Superintendent, Central Excise. An Inspector who possess 8 years service is eligible to be considered for the post of Superintendent.

3. Applicant says that since he joined service initially on 12.6.79, if the period is counted from that date, he is eligible to be considered for the post of Superintendent and if the period is counted only from the date of joining in Cochin Collectorate on bottom seniority, he will not be eligible for being considered to the post of Superintendent since he has not completed 8 years service as per the seniority list maintained by the Cochin Collectorate.

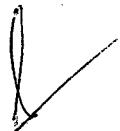
4. Applicant submitted a representation (A2) to the third respondent praying to count his seniority from the date of joining as Inspector i.e., on 12.6.79. The same was disposed of as per A4 impugned order which says that the benefit of past service for the purpose of seniority, and promotion is not permissible to any inter-Commissionerate transferee.

5. Respondents resist the application contending thus. On 3.1.89, the applicant joined Cochin Central Excise Collectorate in a direct recruit vacancy as the last temporary Inspector

undertaking to forgo all his past seniority. He is thus figuring as number one Inspector of 1989 batch in the seniority list of Inspectors of Cochin Central Excise & Customs Commissionerate. The principle of grant of bottom seniority on transfer to a new seniority unit has been upheld by the Apex Court and various Benches of this Tribunal. Though the qualifying service for promotion to the post of Superintendent of Central Excise is 8 years regular service as Inspector, now Inspectors with 20 to 21 years service are being considered for promotion for want of vacancies. At present, in Cochin Commissionerate Inspectors of 1975/1976 batch are getting promotion. The applicant being a 1989 batch Inspector in Cochin Commissionerate for the purpose of seniority, will not come anywhere near the zone of consideration since there are 342 serving Inspectors who are seniors to the applicant in Cochin Commissionerate, and hence the applicant is not entitled to any relief.

6. According to applicant, denying the benefit of past service for the purpose of seniority and promotion is illegal and unsustainable, and in support of this stand the dictum laid down by the Apex Court in Smt. Renu Mullick Vs. Union of India and another (AIR 1994 SC 1152) is pressed into service.

7. Respondents are also relying on the same ruling and according to them in the said ruling, the Apex Court has clearly stated that the appellant therein would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she had put in the required/qualifying service. Thus, according to respondents, as per the said ruling the applicant has first to fall within the zone of consideration for promotion on the basis of his seniority in the transferee Collectorate and thereafter if it is found that he satisfies the



eligibility conditions for promotion on the basis of the total length of service put in both the Collectorates taken together, he would be entitled for being considered for promotion by the Departmental Promotion Committee.

8. Learned counsel appearing for the applicant drew our attention to the ruling in I.C.Joshi and others Vs. Union of India and others (O.A.651/97) of the Principal Bench. Learned counsel for the respondents drew our attention to the ruling of the Jaipur Bench in V.P.Joshi Vs. Union of India and others (O.A.559/93).

9. It is pertinent to note that the rulings of the Principal Bench as well as the Jaipur Bench relied on by the applicant and respondents respectively rely on the ruling of the Apex Court in Smt. Renu Mullick Vs. Union of India and another.

10. Since both the sides rely on the ruling of the Apex Court in Renu Mullick's case and the rulings of the two different Benches of this Tribunal referred to above rely on the said ruling, we will proceed by following the dictum laid down in Renu Mullick's case.

11. In Renu Mullick's case the Apex Court has held that:

"The transferee is to be treated as a new entrant in the Collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous Collectorate cannot be ignored for the purpose of determining her eligibility as per Rule 4 aforesaid."



So, it is clear that bottom seniority in the Collectorate to which the applicant is transferred is recognised by the Apex Court and the applicant would come up for consideration for promotion as per his seniority in the transferee unit. As there are 342 serving Inspectors who are seniors to the applicant, the applicant does not come anywhere near the zone of consideration.

12. According to applicant, he is to be considered for promotion solely based on the total length of service put in by him as Inspector in Bombay Collectorate and Cochin Collectorate. If the applicant is considered for promotion solely based on the total length of service with regard to his seniority position in the Cochin Commissionerate would mean that the assigning of bottom seniority to him in the Cochin Collectorate will have no relevance or significance. Such a stand cannot be countenanced in the light of the dictum laid down by the Apex Court in Renu Mullick's case.

13. According to applicant, one Shri Venugopal was promoted as Upper Division Clerk from the post of Lower Division Clerk counting the past service which he had rendered in Gundoor Collectorate from where he came to Cochin Collectorate on transfer. It is also stated by the applicant that one Shri C.R. Vijayagopalan Nair who joined service only on 17.11.80 who is junior to the applicant has been promoted.

14. Nowhere it is stated by the applicant that these two persons have not come up for consideration for promotion as per their turn in the seniority list in the transferee unit. Even assuming for a moment that these two persons are wrongly promoted, wrong orders cannot be perpetuated with the help of

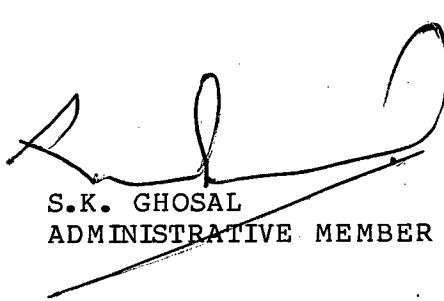


Article 14 of the Constitution of India on the basis that such wrong orders were earlier passed in favour of other persons, and therefore, there will be discrimination against others, if correct orders are passed against them. The principle of equality enshrined under Article 14 does not apply when the order relied upon is unsustainable in law and is illegal. So, based on the stand that the said two persons have been promoted, the plea of the applicant that he should also be considered for promotion cannot be accepted.

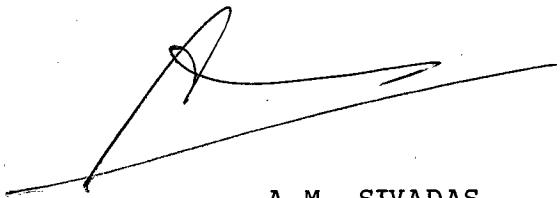
15. Applying the ratio in Renu Mullick's case, the applicant has first to be within the zone of consideration for promotion on the basis of his seniority in the Cochin Commissionerate and from the materials available it is seen that he does not come within the zone of consideration for promotion on the basis of seniority in the Cochin Commissionerate, we do not find any ground to quash A4 order.

16. Accordingly, the Original Application is dismissed. No costs.

Dated the 5th day of January, 1998.



S.K. GHOSAL
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A-2 : Representation submitted by the applicant before the 3rd respondent on 16-2-95.
2. Annexure A-4 : Reply C.No.II/34/9/95-Estt.I dated 30-8-95 issued by the Deputy Commissioner (Preventive & Vigilance), Office of the 3rd respondent.
