

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.48/07

Tuesday this the 18th day of December 2007

C O R A M :

**HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER**

R. Jagannathan,
Deputy Director (Communications),
Office of the Commissioner of Central Excise,
Central Excise Bhavan, Kathrikadavu, Cochin – 17.Applicant

(By Advocate Mr. C.S.G. Nair)

Versus

1. Union of India represented by the Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi – 110 001.
3. The Commissioner,
Preventive Operations,
Loknayak Bhavan, Khan Market,
New Delhi – 110 066.
4. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin – 18.Respondents

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

This application having been heard on 18th December 2007 the
Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN

This application is filed against the delay in granting promotion to the
applicant who is working as Deputy Director (Communications) in the office
of the 4th respondent. According to the facts furnished by the applicant,

the applicant has been re-designated as Deputy Director (Communications) on 7.10.1999 and in the seniority list of officers in the grade of Assistant Director (Communications) his name figures at Serial No.2 (Annexure A-1). There was a restructuring of the Group 'A' cadre in the Telecommunication wing of the CBEC in 1999 by which one post of Deputy Director was upgraded as Joint Director and 3 posts of Assistant Director (STS) were upgraded as Deputy Director in a higher pay scale. Applicant has submitted that after the implementation of restructuring as per Annexure A-3, applicant became the senior most Deputy Director eligible for promotion as Joint Director and the applicant has been submitting requests for promoting him as Joint Director from 12.2.2001 onwards, the date of arising of the vacancy. His representations dated 9.1.2002, 16.1.2002, 18.11.2002, 4.11.2004 and 1.12.2005 had remained unanswered. The applicant was constrained to file an application under Right to Information Act, 2005 vide Annexure A-12 to which he has received the impugned Annexure A-13 reply stating that the post of Joint Director has not been filled up due to non finalisation of revised Recruitment Rules and seniority list. It is the contention of the applicant that the reasons stated in Annexure A-13 are absolutely illegal and in violation of various decisions of the Hon'ble Supreme Court and High Courts and the instructions of the DoPT on the subject.

2. Reply statement and additional reply statement have been filed by the respondents. It is submitted therein that the Recruitment Rules for Group 'A' posts in the erstwhile Directorate of Preventive Operations were notified in 1976 and were amended from time to time upto 1984. In July,

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1999, Group 'A' posts in the Telecommunications Wing were upgraded and re-designated on the recommendations of 5th Pay Commission. As such the Recruitment Rules were required to be re-drawn taking into account the revised nomenclatures, pay scales and sanctioned strength in various grades in Group 'A' service of Telecommunication Wing of Central Board of Excise and Customs. Action for re-drafting/revision of Recruitment Rules has been initiated. Necessary consultation with DoPT is going on and as soon as the approval of DoPT and UPSC are obtained, necessary action for filling up of vacant post in the Telecommunication Wing will be taken.

3. In the additional reply statement they have reiterated that the promotion and its consequential benefits are admissible only from prospective dates. The prescribed procedure for amendment of Recruitment Rules and holding of DPC has to be followed which is time consuming and there is no deliberate delay on the part of the respondents in granting promotion.

4. Rejoinder has been filed pointing out the fact that there are only very few Deputy Directors/Assistant Directors in the Department and seniority list was already prepared and there is no need to revise it. If an employee is promoted retrospectively, he may not be eligible for arrears of pay for the period he had not worked in that post, but he is entitled for consequential benefits. The promotion has been delayed for the last seven years and there was ample time for the Department to hold consultation with the DoPT etc.

5. We have heard the counsel on both the sides. The question raised by the applicant is a very simple one. The respondents have admitted that due to restructuring additional posts of Joint Director had been created. They have not denied that there is a vacancy in the post of Joint Director from 12.2.2001. The reasoning furnished by the respondents for the delay in filling up the post is quite unacceptable as seven years is a long time for undertaking the so called revision of Recruitment Rules. Even for framing of new Recruitment Rules such a long period is not necessary. It is evident from the reply of the respondents that the amendments required to Recruitment Rules only relate to revised nomenclatures, pay scales and sanctioned strength etc. which are only technical amendments concerned with the format of the rules and no changes regarding qualification and method of recruitment etc. are proposed to be made which required detailed consultation and policy decisions. In any case the delay of seven years is absolutely inexcusable. The very purpose of restructuring is to streamline the organisational structure of the Department and also to provide promotional opportunities for the employees and such delay in finalising the Recruitment Rules defeats the objective of bringing about restructuring. It is also evident from the record that even after the restructuring in 1999, the respondents have promoted certain persons as Joint Director which would have been done only in accordance with the existing Recruitment Rules and they have not explained why only in the case of the applicant the revision of Recruitment Rules has been quoted as a reason for not granting promotion. In fact as rightly stated by the applicant it is highly irregular and illegal on the part of the respondents to keep the Recruitment Rules under finalisation from 1999 onwards and

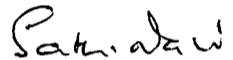
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making appointments and promotions without finalising the rules. In any case now the respondents have submitted that the rules are under the final stage of consideration and by the consent of both the parties, we allow this O.A directing the respondents to finalise the Recruitment Rules on priority basis within a period of two months from the date of receipt of a copy of this order and thereafter to consider the applicant for promotion as Joint Director in accordance with the rules. The O.A is accordingly allowed. No order as to costs.

(Dated this the 18th day of December 2007)



K.B.S.RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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