

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 474/2001

Wednesday, this the 10th day of July, 2002.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

K.O. Chacko,
Inspector of Central Excise(Retd.),
Kunnel Bhavan, Near Koprathu Temple,
Collectorate P.O., Kottayam-2.

... Applicant

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

Vs

1. Commissioner of Central Excise & Customs,
Cochin-I Commissionerate,
Central Revenue Building,
IS Press Road, Cochin-682018.
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-1.
3. Union of India,
rep. by the Secretary,
Ministry of Personnel,
Public Grievances & Pension,
South Block, New Delhi-1.

... Respondents

(By Mr. C. Rajendran, SCGSC)

The application having been heard on 10.7.2002, the Tribunal on the same day delivered the following:

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant was appointed as Sub Inspector of Central Excise in 1962 and promoted as Inspector w.e.f. 1.8.1972 in the Bhuvaneshwar Central Excise Commissionerate. However, he joined the Cochin Commissionerate on inter-commissionerate transfer on 20.9.1976. While continuing in service as Inspector, he retired on superannuation in the year 1992. The Central Board of Excise and Customs thereafter suo-moto decided vide letter A1 dated 20.10.1998 to grant the benefit of past service upto 3 years to persons who took inter-commissionerate transfer prior to 20.5.1980 and to revise their seniority accordingly. The

applicant's seniority was revised. However, the applicant was not given consequential benefits and he was not considered for promotion to Sr. Grade Inspector, Superintendent Group B and Assistant Commissioner(Group A) etc. on the ground that by the time Annexure A1 order was issued, the applicant had already retired from service. The applicant has filed OA 201/2001 claiming consequential benefits on the revision of seniority. The OA was disposed of with a direction to the Commissioner of Central Excise & Customs, Cochin Commissionerate, the respondent No.1 to consider the applicant's claims and to give him an appropriate reply and if he found entitled to the benefits, then make available to him the same. Pursuant to the said order of the Tribunal, an order Annexure A4 dated 10.4.2001 was issued by the 1st respondent turning down the claim of the applicant on the ground that the applicant having 'retired before the issue of Annexure A1 order and in view of the directions contained in the DOPT's O.M. No.22011/4/98-Estt(D) dated 12.10.98 which stipulates that the retired officers would not be given actual promotion, the applicant is not entitled to the benefits claimed by him. Aggrieved by this, the applicant has filed this application seeking the following reliefs :-

(i) To quash Annexure A4.

(ii) Declare that the instructions to the effect that 'retired officials would, however, have no right for actual promotion' as given in Annexure A7, as ultra vires and quash the same.

(iii) Declare that the applicant is eligible for notional Seniority as given in Annexure A2 and all consequential benefits like promotion and monetary benefits.

(iv) Direct the 1st and 2nd respondent to implement Annexure A1 orders by conducting review DPCs for Senior Grade Inspector, Superintendent Group B and Assistant Commissioner(Group A) and to grant consequential monetary benefits within a stipulated period.

(v) Grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper.

(vi) Cost of this Original Application.

2. The respondents resist the claim of the applicant on the ground that the applicant having retired from service in the year 1992, i.e. before Annexure A1 order was issued, though he was given benefit of 3 years of past service and revised seniority, he is not entitled for further promotion.

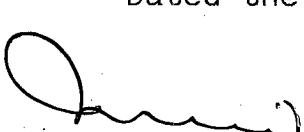
3. We have heard the counsel on either side. An identical question came before this Bench of the Tribunal in OA 408/2001 titled C.S. Gopalakrishnan Nair Vs Commissioner of Central Excise & Customs. In that case the relief sought to set aside DOPT's O.M. No.22011/4/98-Estt.(D) dated 12.10.1998(Annexure A-7 in that case and A5 in the present case) was rejected on the ground that there was nothing objectionable in denying the actual promotion to persons who had already retired. We follow the same and decline to grant relief of setting aside Annexure A-5. Regarding the claim of the applicant for promotion and notional fixation of pay and actual arrears in the case of the post on which the applicant had worked, the Bench in that order observed as follows :-

"However, on the basis of A-1 order the applicant has been given notional seniority as is seen in A-3. The question is to what benefit the applicant would be entitled on the basis of the revised seniority. The contention of the respondents that the applicant apart from being entitled to notional seniority as given in Annexure A-3 is not entitled to any other consequential benefits as he retired prior to the date of issue of Annexure A-1 is absolutely untenable. On the basis of the improved seniority position as assigned in Annexure A-3 the applicant would be entitled to consideration for promotion to higher posts. The respondents have to consider the applicant for promotion as Senior Grade Inspector, Superintendent Group B as also Assistant Commissioner(Group A), although the applicant would not be entitled to the monetary benefits, if he is promoted notionally as Assistant Commissioner(Group A). Since the applicant has held the post of Senior Grade Inspector as also Superintendent, in case DPC finds the applicant suitable for promotion with effect from earlier dates to those posts, he should be given fixation of pay and also arrears for the period he had worked on these posts on the basis of such fixation."

4. In this case also we find that the applicant is entitled to be considered for promotion as Senior Grade inspector and Superintendent. The duties and responsibilities of Inspector and Senior Grade Inspector being the same, if the applicant on the basis of revised seniority is found eligible for promotion as Senior Grade Inspector, he is entitled to be given retrospective promotion and arrears of pay and allowances at that post. If the applicant is found entitled for promotion as Superintendent he would be entitled to notional promotion and fixation of pay and revision of retiral benefits accordingly.

5. In the light of what is stated above, we dispose of this application directing the respondents to consider the applicant's claim for promotion as Senior Grade Inspector, Superintendent and Assistant Commissioner on the basis of the revised seniority as in A2 by a Review DPC. If the applicant is found entitled to promotion as Senior Grade Inspector, he should be given fixation pay and arrears of pay and allowances. If he is recommended by the DPC for promotion as Superintendent of Central Excise and Customs, he should be given notional promotion and fixation of pay without arrears of pay and allowances, but his retiral benefits including pension should be revised accordingly. The above directions shall be complied with and benefits, if any, made available to the applicant within three months from the date of receipt of a copy of this order. No costs.

Dated the 10th day of July, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: A copy of the order F.No.A/23024/4/94-Ad.III(A) dated 20.10.98 issued by the 2nd respondent.
2. A-2: A true copy of the seniority list of Inspectors as on 20.5.1980 issued in C.No.II/34/15/99-Estt.I dated 4.7.2000.
3. A-3: A true copy of the order dated 22.2.2001 in OA No.201/2001 of this Hon'ble Tribunal.
4. A-4: Memo C.No.II/39/12/2001-Estt.I dated 10.4.2001 issued by the 1st respondent.
5. A-5: A true copy of the O.M.No.22011/4/98/Estt.(D) dated 12.10.98 issued by the 3rd respondent.

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