

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 520 OF 2008

Dated the 5th August, 2009

CORAM:-

HON'BLE Dr.KBS RAJAN, MEMBER (JUDICIAL)
HON'BLE MR. K GEORGE JOSEPH, MEMBER (ADMINISTRATIVE)

PV Sujatha,
Inspector of Central Excise
Office of the Commissioner of Central Excise,
CR Buildings,
Mananchira, Kozhikode.

[By Advocate: Mr CSG Nair]


.. Applicant

-Versus-

1. Union of India, represented by its 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 Chief Commissioner of Central
Excise & customs, Central Revenue Buildings,
IS Press Road, Cochin-682 018.
4. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
IS Press Road, Cochin-682 018.
5. The Commissioner of Central Excise,
Central Revenue Buildings,
Mananchira, Kozhikode.

...Respondents

[By Advocates: Mr Pankajakshan for Mr PA Aziz, ACGSC]]

 This Original Application having been heard on 29th July, 2008 the
Tribunal delivered the following –

ORDER

(Hon'ble Mr K George Joseph, AM)

By this application the applicant is seeking notional seniority in the cadre of Inspector from the date of which her immediate junior was promoted as Inspector.

2] The applicant joined service as LDC in the Customs House Cochin on 23.9.74. During 1975 she was transferred to the Cochin Central Excise Commissionerate. She was eligible to get the benefit of OM dated 20.5.80 which was given retrospective effect. It protected the seniority of non gazetted staff in Central Board of Excise & Customs, who took inter Commissionerate transfer before 20.5.80. The protection of their seniority was upto three years. The applicant was granted notional seniority in the cadre of LDC in the Customs House, Cochin. She also got notional promotion to the cadre of UDC w.e.f. the date of her junior was promoted. She was promoted to the executive cadre of Inspector w.e.f. 13.4.93. She was not given notional seniority in the cadre of Inspector over Sri Mammen Kurian her immediate junior in the cadre of UDC.

3] The applicant contends that many similarly placed persons have been given notional seniority over their immediate junior in the cadre of Inspector and so on. The applicant is similarly placed as Shri Rajendran Nair, whose application was allowed by this Tribunal in OA No.796/2001 dated 9.1.2004.

4] Fourth Respondent filed reply statement wherein it is contended that the promotion of ministerial officers (UDC) to the Executive Cadre of Inspector is based on selection method which involves interview, physical test, restriction of age and number of chances, 25% promotion quota etc. The candidates who obtained higher marks on the basis of ACRs and performance in the Interview were to be ranked higher in the selection panel. In the DPC held for the vacancies of Inspectors, in the year 1989-90, 1990-91 and 1991-92 the applicant was considered for promotion but she was not selected as her aggregate marks were lower when compared to that of the officers selected.



5] The applicant was successful in the year 1992-93 and was regularised in the cadre of Inspector, but her case is not similar to that of Sri Rajendran Nair (applicant in OA No.796/2001) who got selected and promoted to the cadre of Inspector in the first chance itself. The applicant was selected and promoted only in the 4th chance and she cannot claim again her seniority above her junior in the UDC cadre who got selected and promoted in an earlier DPC. Similarly her junior in the cadre of UDC Sri Mammen Kurien was promoted in the cadre of Inspector earlier than the applicant and, therefore, the argument that she may be granted seniority in the cadre of Inspector with effect from the date her junior deserves no merit.

6] Learned counsel for the parties were heard and records perused.

7] It is worthwhile to reproduce the operative part of the order of this Tribunal in OA No.796/2001 dated 9.1.2006(Rajendran Nair -v- Commissioner of Central Excise & Customs and Ors).

*" In the conspectus of the facts and circumstances, we are of the view that the applicant has a case and accordingly, we direct the 1st and 2nd respondents to implement the Annex.A1 order without any further delay by revising the seniority of the applicant in the cadre of Inspector and allow all consequential benefits, if any, on notional basis **if he is otherwise found eligible**. We make it clear that the applicant will not be eligible for any monetary benefits flowing out of this order." (emphasis added).*

8] The OM dated 20.5.1980 gives protection to the non-gazetted employees who took inter-commissionerate transfer before 20.5.80, i.e. protection of seniority up to a certain extent and nothing more. It does not confer any right to promotion if the persons concerned are not otherwise found eligible. In the instant case, the applicant could not get selected in the first three attempts. She could get selected only in the fourth attempt by which time her more meritorious juniors got selected and appointed to the cadre of Inspector. Promotion to the cadre of Inspectors is based on selectivity. Merit predominates seniority. In the interest of efficient public service merit should not be sacrificed although



seniority should be respected. Had the applicant been selected along with her junior and appointed to the cadre of Inspector with him she would have had a right to be senior to her junior in that cadre. The applicant cannot stretch the benefit of protection of seniority made available to her by OM dated 20.5.80 to gain seniority over her junior, who was selected on merit and appointed to the cadre of Inspector earlier than she. The relief sought by the applicant for notional seniority amounts to negating merit as the basis of promotion to the cadre of Inspectors, which is not the intended benefit of protection of seniority granted by OM dated 20.5.80. Therefore, there is no merit in the applicant's case.

9] In the result OA is dismissed. No costs.

Dated 05.08.2009.



(K George Joseph)
Member (Administrative)



(Dr. K.B.S. Rajan)
Member (Judicial)

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