

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.527/04

Tuesday this the 13th day of July 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

T.S.Nishath,  
S/o.Sajindranathan,  
Preventive Officer (Customs),  
Customs House, Kochi - 682 009.

Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by  
the Secretary to the Govt. of India,  
Ministry of Finance (Department of Revenue),  
New Delhi.
2. The Central Board of Excise & Customs,  
New Delhi - through its Secretary.
3. The Chief Commissioner of Customs,  
Bangalore Zone, C.R.Building,  
Queens Road, Bangalore.
4. The Commissioner of Customs,  
Customs House, Kochi - 682 009.

Respondents

(By Advocate Mr.N.M.James)

This application having been heard on 13th July 2004 the  
Tribunal on the same day delivered the following :

O R D E R

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

The applicant who initially joined the Chennai Customs House as Preventive Officer on 16.5.1995 was given inter-commissionerate transfer, at his request, to Cochin Commissionerate on 27.10.1997. By order dated 22.10.2003 fourteen Preventive Officers have been promoted on adhoc basis as Superintendent. The seniority list of Preventive Officer as on 1.7.1995 was published on 23.1.2004. The applicant submitted representation Annexure A-3 claiming that he had completed a

period of eight years of service as Preventive Officer and was entitled to be considered for promotion. The applicant did not get any reply to this. Thereafter he found that by order Annexure A-4 dated 30.6.2004 fifteen Preventive Officers, fourteen of them who had been promoted on adhoc basis in Annexure A-1, have been regularly promoted. Finding that even though two more vacancies exist and three vacancies are likely to arise in near future he was not promoted along with those promoted by Annexure A-4 order the applicant has filed this application for a declaration that he is entitled to be considered for promotion as Superintendent (Customs) along with those who are included in Annexure A-1 and Annexure A-4 and for a direction to the respondents to consider the applicant for promotion as Superintendent (Customs) by conducting a review DPC and to grant him the benefit of adhoc and regular promotions as Superintendent (Customs) with effect from the dates of such adhoc/regular promotions of those who are included in Annexure A-1/Annexure A-4 with all consequential benefits of fixation of pay, arrears of pay and allowances etc.

2. It is alleged in the application that the non promotion of the applicant along with those included in Annexure A-1 and Annexure A-4 amounts to hostile discrimination because the Preventive Officers having completed eight years of service constitute a homogenous class and treating him differently for consideration for promotion amounts to hostile discrimination, violative of Article 14 of the Constitution of India.

3. We have gone through the application and annexures very carefully and also heard at length the arguments of

Shri.T.C.Govindaswamy, learned counsel for the applicant and Shri.N.M.James, learned counsel for the respondents. Scanning through the entire averments in the application and materials brought on record we are not able to find any legitimate grievance of the applicant which calls for redressal. There is no allegation that the applicant has been overlooked while juniors were promoted. The applicant presumed that because seniors in the cadre having not completed the required minimum service of eight years could not be promoted, the applicant has been left out of consideration for promotion which according to him is opposed to the dictum laid down in R.Prabha Devi & others Vs. Union of India & others reported in 1988 SCC (L&S) 475 and in Renu Mullick Vs. Union of India & others reported in 1994 SCC (L&S) 570. Learned counsel for the respondents submitted that there is no inaction on the part of the respondents in filling up the vacancies, that as late as 30.6.2004 fifteen persons were promoted as Superintendents and that the applicant ~~could~~ <sup>would</sup> not be considered for promotion is a mere apprehension of the applicant which does not confer on him a cause of action to maintain this application. We find substance in the argument of the learned counsel for the respondents. Since no junior of the applicant has been promoted and promotion to the grade of Superintendents have been made by Annexure A-4 order very recently we do not find any truth in the allegation of the applicant that there is any inaction. We have no doubt in our mind that if vacancies exist the respondents would not consider promotion of the applicant if he is eligible.

Finding no legitimate grievance now to be redressed, we reject this application under Section 19(3) of the Administrative Tribunals Act, 1985.

(Dated the 13th day of July 2004)

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H.P.DAS  
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN  
VICE CHAIRMAN