

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. 533/95

THURSDAY, THIS THE 30TH DAY OF APRIL, 1998.

C O R A M:

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

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

K.C. Ramachandran
Stenographer Grade-III
Office of the Assistant Collector of Central Excise,
Palakkad Division.Applicant

By Advocate Mr. Vellayani Sundararaju

Vs.

1. Union of India represented by
the Secretary to Government
Ministry of Finance,
New Delhi.
2. The Collector of Central Excise,
Central Revenue Buildings,
I.S. Press Road,
Cochin-18.
3. Chairman,
Central Board of Excise and Customs,
New Delhi.
4. The Principal Collector,
Central Excise & Customs,
Madras.
5. P. Venugopal,
Inspector, Central Excise & Customs,
Kollam.
6. M.K. Saveen,
Inspector,
Central Excise Office,
Tellicherry,
7. The Dy. Collector,
(P&V), Central Excise Office,
Kochi.Respondents

By Advocate Mr. P.R. Ramachandra Menon, ACGSC, for R1-4 & 7
By Advocate Mrs. Sumathi Dandapani for R-5

The application having been heard on 23.4.1998, the
Tribunal delivered the following on 30.4.98.

LJ

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O R D E R

HON'BLE S.K. GHOSAL, ADMINISTRATIVE MEMBER

In this case, the applicant has been working as a Stenographer Grade-III in the office of the Assistant Collector of Central Excise, Palakkad Division under the Collectorate of Central Excise, Central Revenue Buildings, Cochin i.e. the 2nd respondent. He has impugned the orders at A2 and A3 passed by the 7th respondent i.e. the Deputy Collector (P&V), working in the office of the 2nd respondent. Under these impugned orders A2 and A3, the party respondents i.e. the 5th and 6th respondents respectively have been promoted to the post of Inspector of Central Excise in the Cochin Collectorate i.e. under the control of the 2nd respondent. The applicant has a grievance against these two promotion orders. Similarly, he has challenged the A6 order which turns down his representation for consideration of his case for promotion to the said post of Inspector of Central Excise (promotional post for short) issued by the 7th respondent.

2. The case of the applicant in brief is that though he is suitable for promotion to the post of Inspector of Central Excise, the DPC which met for consideration of the eligible officers for promotion to the said post at the end of March, 1994, did not do adequate justice to him and ignored his case in favour of the 5th and the 6th respondents. According to him, the DPC did not follow the prescribed procedure and that they did not adopt the proper marking system as prescribed by the Department. The applicant has alleged that the DPC also failed to recognise the fact that the 5th respondent did not meet the minimum physical standards prescribed for the promotional post; in particular the size of his chest was



not a minimum of 81 cms with a minimum expansion of 6 cms. He has further alleged that the DPC wrongly also considered the 6th respondent as eligible when, according to the applicant, the 6th respondent had not fulfilled the minimum period of service as UDC as prescribed under the Recruitment Rules, which is a minimum period of 2 years service as a UDC in a Collectorate and a total service of 12 years in the combined cadre of UDC and LDC, of which at least 2 years should be as a UDC.

3. The grounds for his allegations are that though the Department in the circular dated 4.11.1992 at A1 have emphasised that there should be no relaxation of the physical standards, even then the DPC has considered the 5th respondent after relaxing in his case the minimum physical standards prescribed. Similarly, in respect of the 6th respondent, he has alleged that the 6th respondent had come on transfer to the Cochin Collectorate from Guntur in Andhra Pradesh Circle and he was consequently placed at the bottom of the seniority list in the transferred Collectorate i.e., the Cochin Collectorate and could not have put in the requisite period of service as UDC having joined there on 10.8.89 by the time he was considered for the promotional post by the DPC in March, 1994. The applicant has also alleged that the promotion of the 5th respondent and the 6th respondent is the result of favouritism on the part of the predecessor in office of the 7th respondent. He has finally sought the following reliefs:

"a) To direct respondents 2 and 7 to grant promotion to the applicant as Inspector of Central Excise with retrospective effect from 7.4.1994 onwards;

ii) To quash Annexures A2 and A3 and A6 by declaring that the promotions granted to respondents 5 and 6 are highly illegal and unsustainable and that were made in violations of all prescribed rules/norms of

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promotions. In the case of Annexure A6 it is to be declared that it was issued without any basis and with malafide intention.

c) To call for the records of Departmental Promotion Committee proceedings pertaining to the promotions of respondents 4 & 5.

d) To issue necessary direction to respondents 1 to 4 for fixing prescribed ratios for promotion to the post of Inspector of Central Excise from the 5 feeder categories.

e) to allow costs to these proceedings

f) to issue any other further order or direction this Hon'ble Court may deem fit on the circumstances of the case."

The case of the applicant has been strongly resisted by the official respondents i.e., the 1st, 2nd, 3rd, 4th and 7th respondents. On their behalf it has been asserted that the 5th respondent indeed meet the minimum physical standards including the chest measurement of 81 cms and a minimum expansion of chest of 5 cms and therefore the allegation on this count made by the applicant is not substantiated.

5. They have further said that the 6th respondent having joined the transferred cadre i.e. the Cochin Collectorate in 1989 and having put in more than the minimum prescribed period of service as a UDC for 2 years when he was considered for promotion as Inspector of Central Excise by the DPC in March, 1994 was also eligible for consideration. They have in particular pointed out that in the light of the judgment of the Supreme Court in Renu Mullick's case reported in 1994 (50) SLR 481 (SC) in Civil Appeal No. 4173 of 1993 dated 19.11.93, once an officer puts in the minimum prescribed service at the feeder post in the transferred cadre, for the purpose of

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counting his seniority for inclusion in the list of eligible officers for consideration by the DPC for the promotional post, his total service is required to be taken into account. Such total service must include the service rendered by the officer previously in the transferee cadres.

6. According to them, the 6th respondent having joined the Cochin cadre in 1989, had put in more than the minimum prescribed period of 2 years service as UDC in the transferred cadre i.e the Cochin cadre by the time DPC had met towards the end of March, 1994 and therefore his entire past service both as a UDC and as a LDC including the service rendered by him in the transferee cadre (Andhra Pradesh) was taken into account.

7. As regards the applicant's contention that he was not properly considered by the DPC even though he was suitable in all respects, the official respondents have specifically asserted that the promotion to the post of Inspector of Central Inspector from the feeder category like Stenographers, UDCs, etc. is admittedly based on selection and not merely on the seniority in service in the relevant feeder category under the Recruitment Rules. The mere fact that based on seniority in the feeder category, the applicant was included in the zone of consideration, is not adequate guarantee of his selection for promotion vis-a-vis his juniors also present in the same zone of consideration. They have specifically pointed out that as an integral part of the process of selection, a comparative assessment of the performance of all the officers in the zone of consideration is required to be made by the DPC. According to them, that is exactly

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what was done in the present case.

8. The party respondent No.5 has averred in his reply statement that he had undergone physical measurements at the time of conducting certain tests for physical fitness/endurance, like cycling, and when the measurements were taken like the measurement of his chest including the size of expansion of his chest when fully expanded, he was found to have satisfied the minimum physical standards. In particular his chest was not less than 81 cms in size and the degree of expansion not less than 5 cms when expanded fully.

9. On behalf of the party respondent No.6, no reply statement per se was filed.

10. We have carefully considered the pleadings in the case and heard the learned counsel appearing for the parties. Since neither the applicant nor any of the respondents had furnished a copy of the statutorily prescribed Recruitment Rules, we requested the official respondents to make available a copy of those rules to us. Similarly, to examine the allegation made by the applicant that the DPC had not correctly followed the prescribed procedure while making recommendations for promotions to the post of Inspector of Central Excise, we had requested the official respondents to make available to us the proceedings of DPC. These two documents were supplied to us on 28.4.98. We have gone through them with interest.

11. It is clear that though the applicant has made a vague allegation of favouritism on the part of the predecessor in the office of the 7th respondent, he has



not been impleaded as a party to these proceedings by the applicant. Therefore a vague allegation of malafide on his part can not be taken seriouly byus. Further, the applicant, apart from making the vague allegation of favouritism, has not cited specific reasons for the alleged acts of favouritism nor has he provided some instances when acts of favouritism were indulged in by the predecessor in office of the 7th respondent. The allegation on this score, we hold, is therefore, without any basis.

12. We also find that the applicant, apart from making an averment that the 5th respondent does not satisfy the minimum physical standards in respect of measurement of chest and the degree of expansion of the chest, has not placed any material to substantiate such an allegation. On the contrary, both the 5th and the official respondents have averred that at the time of conducting the test for physical endurance like cycling, etc., the 5th respondent was subjected to certain measurements to ensure that he met the minimum physical standards and that the measurements indicated that the 5th respondent met those standards adequately including the size of the chest in normal conditions and the extent of expansion of his chest. In the absence of any dependable material, we hold that the allegations made by the applicant on this score is not substantiated and, therefore, cannot be accepted as maintainable.

13. In respect of the 6th respondent we entirely agree with the official respondents that following the order of the Apex Court mentioned above in Renu Mullick's case, as



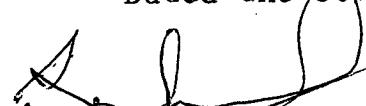
long as the 6th respondent has put in the minimum prescribed service of 2 years as a UDC in the transferred cadre of the Cochin Collectorate, his entire past service including service rendered by him in the previous Collectorate will have to be taken into account. This being the only allegation against the 6th respondent, we are unable to persuade ourselves that the promotion of the 6th respondent was an act of favouritism or was otherwise invalid.

14. As regards the procedure followed by the DPC we have satisfied ourselves after going through the proceedings of the DPC that the DPC did actually follow the system of marking, i.e., a total of 80 marks out of 100 marks being allotted on the basis of the performance as reflected in the ACRS and a total of 20 of the 100 marks being set apart to be awarded on the basis of the performance at the interview. We are further satisfied that the applicant was indeed considered for promotion by the DPC but he was not found suitable for selection for promotion as an Inspector of Central Excise based on the overall comparative assessment made by the DPC.

15. Under these circumstances and considering the relevant facts and materials placed before us and in the light of the detailed discussions made above, we do not find that the O.A. has any merit. Therefore, we dismiss the O.A.

There is not order as to costs.

Dated the 30th April, 1998.


S. K. GHOSAL
ADMINISTRATIVE MEMBER


A. M. SIVADAS
JUDICIAL MEMBER

KMN

List of Annexures

1. Annexure A.1 Letter No.A-12034/26/92 Ad-III B dated 4-11-92 of the CBEC.
2. Annexure A.2 Office Order No.77/94 dated 18-5-94 issued by the 7th respondent.
3. Annexure A.3 Office order No.132/94 dated 18-8-94 of the 7th respondent to the 6th respondent.
4. Annexure A.5 Letter No.II/39/41/94 Con-Cx. dated 1-2-95 of the Deputy Collector (P&V) to the applicant.

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 533 of 1995.

Thursday this the 29th day of February, 1996.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.C. Ramachandran,
Stenographer, Grade III,
Office of the Assistant Collector of
Central Excise, Palakkad Division. .. Applicant

Vs.

1. Union of India, represented by
Secretary to Government, Ministry
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2. The Collector of Central Excise,
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3. Chairman, Central Board of Excise
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4. The Principal Collector, Central
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5. P. Venugopal, Inspector,
Central Excise Office, Kollam.
6. M.K. Saveen, Inspector,
Central Excise Office, Tellicherry.
7. The Deputy Collector (P&V),
Central Excise Office, Kochi. .. Respondents

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Neither applicant nor his counsel is present.

There is no representation either. Application is dismissed.

No costs.

Thursday this the 29th day of February, 1996.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN