

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 559/89
~~XXXXXX~~

138

DATE OF DECISION 30-10-1990

K Kumaran Applicant (s)

M/s K Balakrishnan &

PK Ravikrishnan

Advocate for the Applicant (s)

Versus

Union of India & 5 others Respondent (s)

Mr C Kochunni Nair, ACGSC

Advocate for the Respondent (s) 1 to 4

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. To be circulated to all Benches of the Tribunal? *yes*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed that the decision of the Board to reject his representation communicated to him by the letter of the Collector of Central Excise dated 12.8.1988 may be quashed and that the respondents may be directed to promote him notionally as Inspector of Central Excise with effect from 1967 and to grant him all consequential benefits and further promotion. The facts of the case can be briefly stated as follows.

2. While the applicant was working as Upper Division Clerk in the Central Excise Department in the year 1967, he was called

...2...

for an interview at Madras by the Departmental Promotion Committee for considering him for promotion to the post of Inspector of Central Excise. Though his name was also included in the panel prepared by the DPC for promotion, since his rank was a bit low, he was not promoted in the year 1967 for want of vacancy. Thereafter, the DPC met regularly in all the succeeding years and interviewed persons who were junior to the applicant. Though the constitution of the DPC for each year varied, the applicant was not promoted considering the marks awarded to him in the interview held by the Committee in the year 1967. Ultimately, the applicant was promoted only in the year 1973. Between 1967 and 1973, numerous UDCs who were junior to the applicant were promoted as Inspectors. Respondents 5 and 6 are two among such juniors who were promoted during this period. As the procedure adopted by the DPC to adopt the marks awarded to him by the DPC ^{interview held} at the / in the year 1967 during the succeeding years also without interviewing him was unscientific and perverse, the grievance of the applicant and similarly placed persons were espoused by the Ministerial Officer's Association. As the representation through the Association did not yield any fruit, Shri VV Sekhara Marar who was also similarly aggrieved as the applicant approached the Hon'ble High Court of Kerala. He filed OP Nos.3880/72, 2163/76, 1340/79 and W.Q.551/82. The Hon'ble High Court in W.A.No.551/82 held that the procedure adopted by the DPC in assessing the comparative merit of the petitioner in that case for promotion vis-a-vis other candidates who were interviewed

by the DPC without interviewing him and basing on the marks obtained in the previous year's interview was unfair and unjustified. The Hon'ble High Court directed the respondents in that application to promote Mr. VV Sekhara Marar with effect from 1967 and to give him all consequential benefits. As the applicant was similarly placed as Mr. Sekhara Marar, the applicant in W.A.No.551/82, he made a representation before the fourth respondent on 17.7.1986 claiming that he should be given the same benefit. After continued correspondence, he received ^{the} impugned order at Annexure-XI dated 12.8.1988 informing him that the Board had rejected his representation and it had been decided that the judgement of the Hon'ble High Court of Kerala in Mr. Sekhara Marar's case could not be made applicable to him. Aggrieved by the above order, the applicant has filed this application. It has been averred that the procedure adopted by the DPC in making an assessment of his merits for promotion during the years 1968 to 1972 on the basis of the marks awarded by the DPC in 1967 is unscientific, illegal and unjust and that the decision of the Board that the principle in Sekhara Marar's case cannot be made applicable to him is absolutely perverse and unreasonable.

3. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced.

4. In the reply statement filed on behalf of respondents 1 to 4, the allegation that the applicant was not interviewed by the DPCs for the years 1968, 1969, 1970, 1971 and 1972, and that comparing the marks awarded to him by the DPC at the interview held in 1967 with the marks awarded to other


candidates by the DPCs during these years he was not selected and promoted is not disputed. In paragraph 6 of the reply statement, it has been stated that the case of the applicant was considered by ^{an} ~~ad-hoc~~ DPC ~~held~~ on 15.1.1969 as the ...C.R. of the applicant was not available on 17/18.10.1968 ^{when} ~~the~~ regular DPC met for considering the case of U.D.Clerks for promotion as Inspectors and that the ad-hoc DPC recommended that the applicant should be placed between 19 and 20 in the panel drawn up for the promotion to fill 25 vacancies. It is not made clear as to why inspite of this, the applicant was not promoted with effect from the date on which the candidates cleared by the DPC on 17/18.10.1968 were promoted. To assess the merit of the applicant vis-a-vis the merit of other candidates interviewed without interviewing the applicant and basing on the mark awarded to him at the interview held by a different DPC in the year 1966-67 ^{an} is ~~absolutely~~ illegal and unjustifiable practice. It has been so held in W.A.No.551/82 by the Hon'ble High Court of Kerala in Sekhara Marar's case. If promotion was denied to the applicant with effect from the date on which persons cleared at the DPC on 17/18.10.1968 on the ground that he did not come up in the panel on the basis of an assessment of his merits considering the marks obtained by him in the interview held in 1967 that is clearly illegal. When the applicant made representations and brought to the notice of the authorities the illegality committed by the DPCs and the decision of the Hon'ble High Court of Kerala in W.A.No.551/82 as the principle enunciated in that judgement would clearly

apply to him also, the respondents should have given the applicant the same benefit which was given to Sekhara Marar, pursuant to the decision in W.A.No.551/89. The decision of the Court conveyed to the applicant by Annexure-XI order that the principle in Sekhara Marar's case cannot be applied to his case is absolutely unreasonable. It was because the Hon'ble High Court found that the procedure of evaluating a person's merit by a DPC on the basis of marks awarded by another DPC at a different point of time is unscientific, that the Hon'ble High Court directed that Shri Sekhara Marar should be considered to have been included in the panel for the year 1967 though the DPC did not clear him for promotion in that year. The same principle applies to the case of the applicant also. Further, as observed earlier, from paragraph 6 of the reply statement as it appears that the applicant was to be placed at Sl.No.19-A in the panel prepared in the year 1968 for filling 25 vacancies of Inspectors of Central Excise, we fail to understand how and why the applicant was not promoted in the year 1968. To direct the respondents to interview the applicant again to consider his suitability for promotion in the years 1968 to 1972 will be meaningless because the applicant is now already holding the post of Superintendent of Central Excise. Since the applicant was denied promotion in the year 1968 for no fault of his and considering the illegality committed by the DPC, we are of the view that the interest of justice demands a direction to be given the respondents to give him notional promotion

with effect from 1968 as Inspector of Central Excise and to grant him all consequential benefits.

5. In the result, the application is allowed, the decision of the Board communicated to the applicant in Annexure-XI letter is quashed and the respondents are directed to promote the applicant notionally with effect from the date on which the person cleared by the DPC in the year 1968 at Sl. No.20 in the panel was promoted as Inspector of Central Excise and to grant him all consequential benefits including further promotion in due time alongwith arrears of pay and allowances calculated on the basis of such promotion. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

30.10.1990

trs

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA 130/90 in O.A. No. 559/89
~~XXXXXX~~

198

DATE OF DECISION 21-3-1991

K Kumaran Applicant (s)

Mr K Balakrishnan Advocate for the Applicant (s)

Versus

The Union of India rep. by Respondent (s)
the Secretary to Govt. of India
Ministry of Finance, North Block,
New Delhi and others.
Mr C Kochunni Nair, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

Shri AV Haridasan, J.M

The applicant who is presently working as Superintendent of Central Excise has filed the original application praying that he should be promoted to the post of Inspector of Central Excise notionally w.e.f the year 1967. After considering the rival contentions of the parties in the case we by an order dated 30.10.90 allowed the claim of the applicant and directed the respondents to promote the applicant notionally with effect from the date on which the person cleared by the DPC in the year 1968 at Sl.No.20 in the panel was promoted as Inspector of Central Excise and to grant all consequential benefits including further promotion in due time alongwith arrears of pay and

allowances calculated on the basis of such promotion. Though the application was allowed as the person cleared by the DPC in the year 1968 at Sl.No.20 was junior to the applicant, he was promoted only in the year 1973 after the applicant had already been promoted, and therefore going by the direction in the order, the applicant would not get any benefit at all though it was intended by the judgement that the applicant should be promoted with effect from the year 1968. Therefore, the applicant has filed this application for review of our order and for a direction to promote him with effect from the year 1968.

2. W When the application came up for hearing, it was suggested by the learned counsel for the applicant that the applicant would ^{be} satisfied if his promotion is ante-dated to the year 1968 as the juniormost person promoted as Inspector of Central Excise in that year ~~he would be~~ satisfied. Shri C.Kochunni Nair, Central Government Standing Counsel appearing for the respondents fairly conceded that the applicant is entitled to be promoted as an Inspector of Central Excise with effect from the year 1968 as the juniormost person promoted in that year and that the Department has decided to promote him with effect from the year 1968 as Inspector of Central Excise and to give all consequential benefits.

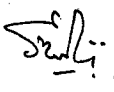
3. In view of this submission at the Bar by the counsel we are convinced that in the interest of justice it is necessary to review the order and recast the last

paragraph of our order dated 30.10.90 as follows:

"In the result, the application is allowed. The decision of the Board communicated to the applicant in Annexure XI letter is quashed and the respondents are directed to promote the applicant notionally with effect from the year 1968 as the junior most person promoted to the cadre of Inspector of Central Excise in that year and to grant him all consequential benefits, including further promotion on due time alongwith arrears of pay and allowances calculated on the basis of such promotion. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs."

5. The Review Application is allowed. The order dated 30.10.90 will modified as stated above.


(A.V. HARIDASAN)
JUDICIAL MEMBER

 21.3.91
(S.P. MUKERJI)
VICE CHAIRMAN

21.3.1991