

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.561/95

Friday, this the 18th day of October, 1996.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

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KC Vijayan,
Superintendent of Central Excise (Retired),
"Radhika", Talassery—5.

....Applicant

By Advocate Shri OV Radhakrishnan.

vs

1. Collector of Central Excise,
Central Revenue Buildings, Kochi--18.
2. Central Board of Excise & Customs,
New Delhi.
3. Union of India represented by its
Secretary, Ministry of Finance,
Department of Revenue, New Delhi.
4. Departmental Promotion Committee represented
by its Convenor, Principal Collector of
Central Excise and Customs, Annexure Building, 3rd Floor,
3rd Floor, 121, Nungambakkam Road,
Madras--34.
5. S Ganga Devi,
Senior Superintendent of Central Excise,
Central Revenue Building, Kochi--18.

....Respondents

R.1-4 by Shri PR Ramachandra Menon, Addl Central Govt Standing Counsel.

The application having been heard on 14th October, 1996,
the Tribunal delivered the following on 18th October, 96:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant was promoted as Inspector of Central Excise
on 4.8.70 while fifth respondent was promoted as Inspector of
Central Excise on 8.10.70. By order dated 20.3.79 in OP
No.4489/1977 A, confirmed in WA 144 and 145/1979 on 26.6.81,

contd.

the High Court of Kerala directed that applicant be placed above fifth respondent in seniority. Fifth respondent had in the meanwhile been promoted on 1.12.80 as Superintendent of Central Excise, and the High Court of Kerala directed in WA 144 and 145/1979 that the promotion of fifth respondent made during the pendency of proceedings before the Court, be reviewed. The implementation of this direction was, however, delayed by litigation which came to an end in August, 1988. Applicant, who had been promoted as Superintendent of Central Excise on 20.10.81, came to know of this in March, 1990 and thereupon, he represented on 2.5.90 for getting the decision in WA 144 and 145/1979 implemented. Meanwhile, by order A5 dated 29.11.90, fifth respondent was promoted ad hoc as Assistant Collector of Customs and Central Excise/Senior Superintendent of Central Excise in the Junior Time Scale. Applicant filed OA 384/91 and the Tribunal by A6 order dated 4.9.91, noticed that in the seniority list finalised on 16.2.82 and produced before the High Court of Kerala in WA No.311/1984, which was to be treated as final, applicant was ranked at Sl No.50 and fifth respondent was ranked at Sl No.71. The Tribunal directed that a Review Departmental Promotion Committee (DPC) meeting be convened to consider the claim of applicant for promotion on 1.12.80 on which date, fifth respondent had been promoted during the pendency of WA 144 and 145/1979 in the High Court of Kerala. The promotions made in 1980 and 1981 were reviewed by the DPC on 25.10.91 and by A7 dated 18.11.91, 12 persons not including the applicant, were promoted as Superintendent on 1.12.80 and 10 persons including the applicant and the fifth respondent were promoted on 15.6.81. Applicant, who retired on 30.11.91, challenged A7 in OA 1673/92 on the ground that the vacancies for 1980 were not correctly assessed, that he was in the zone of consideration for 1980

conttd.

whereas the fifth respondent was not, and so for 1980, he could not be superseded by the fifth respondent on the basis of merit. The Tribunal by order A-12 dated 14.1.94 directed that the number of vacancies for 1980 should be kept as four and that the number of vacancies for 1981 should be worked out accordingly. The Tribunal also quashed A7 and directed a fresh review of the promotions made in 1980 and 1981. According to A9, the review DPC has to consider three times the number of vacancies or 12 persons for 1980. The Review DPC met on 8.8.94 and both applicant and the fifth respondent were promoted against vacancies in 1981. A-13 dated 17.8.94 was issued by which applicant was promoted on 1.10.81 while fifth respondent was promoted on 15.6.81. Applicant challenges A-13 on the ground that according to the seniority list, fifth respondent would not be in zone of consideration for 1980 while he would be and, therefore, he cannot be superseded by fifth respondent for promotion as Superintendent and subsequently for Assistant Collector.

2. Respondents 1 to 4 state that as directed in OA 1673/92, the vacancies for 1980 were fixed at four. This resulted in the vacancies for 1981 being fixed at 13. The seniority list of 16.2.82 was used as the basis and 12 persons in the zone of consideration were considered for 1980 by the Review DPC on 8.8.94. The Review DPC took into consideration two persons who had been given notional promotion in 1968 as Inspector of Central Excise as a result of directions of the Tribunal in OA 559/89, RA 130/90 and OA 1105/92. Applicant and the fifth respondent both do not find a place in the list of 12 persons in the zone of consideration for 1980. The Review DPC selected four persons out of these 12 and they were promoted on various dates in December, 1980 by R1(a) order dated 17.8.94. Applicant and

contd.

the fifth respondent were, therefore, considered for vacancies in 1981 and were selected and promoted by R1(b) dated 17.8.94 which is the impugned order A-13. Since fifth respondent had a rating of "very good" she was placed above the applicant and promoted on 15.6.81 and applicant was promoted on 1.10.81 on the basis of the vacancy position.

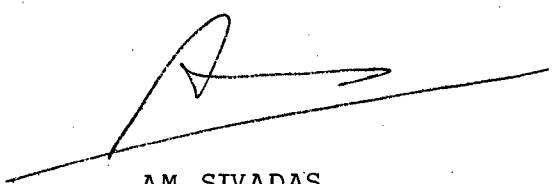
3. In the Review DPC held pursuant to the directions in OA 1673/92, the vacancies were taken as four for 1980 and 12 persons were considered as being in the zone of consideration. The directions in that Original Application were thus complied with. The seniority list of 16.2.82 of Inspectors has not been produced along with the name of the last person in that list who had been promoted as Superintendent before 1.12.80 so that it is not possible to directly verify whether applicant will come within the first 12 of the persons to be promoted as on 1.12.80. In his rejoinder, applicant has not asserted that the list of 12 persons given by respondents 1 to 4 in their reply statement is incorrect. On the other hand, his grievance is that two persons have been included in the list in pursuance of the directions of the Tribunal in OA 559/89 and OA 1105/92 which according to applicant violates the declaration in OA 384/91 that the seniority list of 16.2.82 is final. Since the inclusion of two persons in the list is in pursuance of orders of the Tribunal, respondents 1 to 4 cannot be faulted for including their names in the seniority list. We must also add that even if these two persons were not added to the seniority list, applicant would still not have come within the first 12 names for 1980, because the 12th person considered was PM Chandrasekharan Nair and from A-13, we see that there are four persons senior to applicant after Chandrasekharan Nair.

contd.

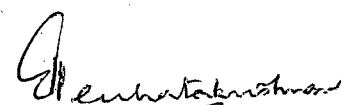
4. Applicant had obtained a direction in WA 144 and 145 of 1979 that the promotions made till 26.6.81, which were four in 1980 and four in 1981 should be reviewed taking note of the fact that he is senior to respondents 4 to 10 in OP 4489/1977 A of the High Court of Kerala. This cannot be interpreted to mean, as applicant seems to do, that applicant has to be considered for a vacancy only in 1980, just because the first person among the respondents 4 to 10 in OP 4489/1977 A to be promoted during the pendency of WA 144 and 145/1979 was promoted on 1.12.80. When the promotions made till 26.6.81 were reviewed, applicant was found eligible for promotion against a 1981 vacancy. A-13 does not violate the direction of the High Court of Kerala placing applicant above respondents 4 to 10 in that OP. The fifth respondent here and one T Mahadevan are placed above applicant in the list of Superintendents and not in the list of Inspectors. That is because their grading was higher than that of applicant and the promotion to the post of Superintendent is by selection. In such a situation, the seniority in the feeder category is not necessarily reflected in the promotional category. We do not consider that A-13 violates the directions of the High Court of Kerala or the Tribunal in the several cases relating to the matter and which have been referred to above, the net result of which is that while the date of promotion of fifth respondent has gone down from 1.12.80 to 15.6.81, the date of applicant's promotion as Superintendent has moved up from 20.10.81 to 1.10.81.

5. The prayer of applicant to quash A-13 cannot, therefore, be granted. The application is dismissed. No costs.

Dated the 18th October, 1996.



AM SIVADAS
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

List of Annexures

1. Annexure -A5: True copy of the Office Order No.202/90 dated 29-11-90 of the 3rd respondent.
2. Annexure -A6: True copy of the judgement in OA No. 384/91 dated 4-9-91 of this Hon'ble Tribunal.
3. Annexure -A7: True copy of the Order NO. 233/1991 dated 18-11-91 of the 1st respondent.
4. Annexure -A9: True copy of the Letter No.22011/3/76-Ests.dated 24-12-80 of the 3rd respondent.
5. Annexure -A12: True copy of the judgement in O.A.No.1673/1992 dated 14-1-1994 of this Hon'ble Tribunal.
6. Annexure -A13: True copy of the Order No. 134/1994 dated 17-8-1994 of the 1st respondent.
7. Annexure-R1(a). True copy of the Order No.135/94 dated 17.8.94 of the 1st respondent.
8. Annexure-R1(b): True copy of the order No.134/94 dated 17-8-94 of the 1st respondent.

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