

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 65 OF 2011

Tuesday..., this the 04th day of December, 2012

CORAM:

**HON'BLE Dr. K.B.S. RAJAN , JUDICIAL MEMBER
HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

K.V Balachandran
S/o.A.K Velayudhan Elayidam
Kuttampilly House, Vennala
Kochi - 25

- Applicant

(By Advocate Mr.P Ramakrishnan)

Versus

1. Union of India
Represented by Secretary
Department of Revenue
Ministry of Finance, New Delhi – 110 011
2. The Chairman
Central Board of Excise and Customs
Department of Revenue
Ministry of Finance
New Delhi – 110 011
3. The Commissioner of Customs
Custom House
Kochi – 682 009

- Respondents

(By Advocate Mr.Pradeep Krishna, ACGSC)

The application having been heard on 15.11.2012, the Tribunal on 04.12.12 delivered the following:

ORDER

HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER

1. The applicant has filed this OA seeking a direction to the respondent to promote him as Chemical Examiner Grade-II (CEG-II for short) with effect from 11.12.1997 with all consequential benefits.

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2. The applicant has commenced his service as a Chemical Assistant Grade II on 16.09.1968 and became Assistant Chemical Examiner in the year 1985. While working in the said capacity, he was promoted as Chemical Examiner Grade II on adhoc basis for six months as per order dated 10.11.1997. Even though his initial adhoc promotion was for a period of six months, the same was continued without break. While so, R-1 issued Annexure A-2 order dated 28.07.1999, promoting him as CEG-II on adhoc basis for a period of one year with effect from 01.12.1998. A similar order was issued on 06.02.2002 extending the adhoc promotion for one more year (Annexure A-3). The applicant avers that as vacancies were available, his initial promotion should have been regularised. Therefore, he submitted Annexure A-4 representation seeking regularisation as CEG-II with effect from 11.12.1997 with all consequential benefits. Immediately thereafter, he was served with Annexure A-5 order dated 09.01.2003 reverting him as Assistant Chemical Examiner with effect from 01.12.1999. Applicant challenged Annexure A-5 order by filing OA No.31/2003. Similarly placed adhoc Chemical Examiners Grade II had filed OA 526/2002 before CAT Bombay Bench seeking a direction to the respondent to convene DPC to fill up vacancies of CEG-II for the years 1998 to 2002. The Central Revenue Chemical Services Association also filed OA 87/2003. These two OAs were heard together and by an order dated 22.20.2003 the CAT Bombay Bench directed the respondents to take steps for filling up the vacant posts on a regular basis from the dates the vacancies had arisen (Annexure A-6). The Writ Petition filed by the respondents against Annexure A-6 order was dismissed by the Hon'ble High Court of Bombay on 28.10.2004. Special Leave Petition was also dismissed. During the pendency of the OA, the applicant was promoted on regular basis. OA 31/2003 was disposed off with a direction to the respondents to consider the regular promotion of the applicant as per the direction of the Mumbai Bench as narrated in Para 6 of the order within a period of four months. The applicant avers that respondents had taken four years to pass an order rejecting the applicant's claim for promotion with effect from 11.12.1997 (Annexure A-8). Therefore, the applicant alleges that the direction given by this

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Tribunal was not followed in letter and spirit. In the order, it was specifically stated that those who were granted adhoc promotion, if found within the consideration zone for a particular year, should be considered for promotion and be given seniority with effect from the said date. He avers that the respondents are liable to consider the applicant for regular promotion as CEG-II with effect from 1997.

3. The respondents contested the OA and filed reply statement. They submitted that the applicant was promoted purely on adhoc basis vide order dated 10.11.1997 to 30.11.1999. He continued to draw pay and allowances as CEG-II beyond 01.12.1999 and on instructions from R-2, he was reverted to the post of Assistant Chemical Examiner. The applicant filed OA 31/2003 and the reversion order was quashed and set aside by this Tribunal. In the mean while, C.A.T Bombay Bench in its order dated 22.10.2003 in OA 526/2002 and 87/2003, directed the department to take steps for filling up the vacant posts on regular basis from the date, the vacancies arose. Accordingly, approval was sought from DOPT, which stated that promotion cannot be given with retrospective effect and seniority is to be fixed with reference to the sequence of empanelment done year wise by DPC. Respondents submitted that the applicant, on the date of his superannuation on 31.02.2005, was under suspension.

4. The applicant has filed rejoinder and stated that as against the cadre strength of 45 CEG-II, only 16 were in place according to the seniority list of 1.1.2002. He produced Annexure A-9, a copy of the letter from R-1 to R-2 regarding implementation of the order of CAT, in his case and other applicants (in O.A 526/02 and 87/03 before Mumbai Bench). Therefore, on 17.09.12 when the case came up for consideration, the respondents were directed to file an additional reply statement to show the dates from which the applicants in the aforesaid O.As before CAT Bombay Bench were granted promotion to the post of CEG-II.

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5. The respondents therefore, filed additional reply statement enclosing the information called for by this Tribunal as Annexure R1 and R2.

6. Arguments were heard and records perused.

7. The applicants in the O.As before this Bench and CAT Bombay Bench joined the respondents' department as Chemical Assistant Grade II in Group C category and further promoted to Chemical Assistant Grade I in Group C. With their next promotion from 1983 to 1985, they became Group B officers and designated as Assistant Chemical Examiners. They were then granted officiating promotion as CEG II in Group A. The respondents have submitted in O.A 526/02 and 87/03 before the CAT, Mumbai Bench that the manner of recruitment to CEG-II, a Group A post, is by promotion to the extent of 66.66% and by direct recruitment for the remaining 33.33%. The respondents submitted that in 1997-98, there were 20 posts in the promotion quota and 17 posts in the direct recruitment quota. For the years 1997-2000, 22 promoted officers were holding the post of CEG-II on regular basis and one officer was working against the direct recruitment quota. Therefore, there were 16 vacancies in the direct recruitment quota. Out of the 6 vacancies for promotion quota, 01 reserved for SC could not be filled up besides 16 vacancies under direct recruitment quota. The respondents, therefore, took up a proposal to convene DPC to promote 6 more officers for the year 1997-98. However, after due consultation with UPSC, 4 officers were promoted. In 1997 pending recruitment under direct recruitment quota, 30 Assistant Chemical Examiners were promoted on adhoc basis as CEG-II in Group A. Since cadre strength of CEG II was only 45 in 1997, and 22 officers were regularly promoted besides 4, how the respondents ordered officiating arrangement for 30 more Assistant Chemical Examiners is not very clear. In such a situation, the presumption is that all vacancies including direct recruitment quota were manned by promoting Assistant Chemical Examiners on adhoc basis due to administrative exigency.

In that context only, DOPT would have clarified in the Annexure A-9 letter dated



20.07.2006 that filling up of vacancies prior to amendment of Recruitment Rules and its scope cannot be extended to allow retrospective benefit to empanelled officers against arising vacancies subsequently. CAT Mumbai Bench has disposed of O.A 526/02 and 87/03 with a direction to the respondents to initiate action to fill up the vacant post on regular basis from the date such vacancies arose and accordingly the seniority list of direct recruits and promotees is to be prepared. Hence, the respondents convened the DPC and issued orders for promoting the applicants in all the O.As as on the date of convening the DPC, which happened to be 15.09.2003. Therefore, all the applicants, except those who retired including the applicant in the present O.A, were promoted with effect from the date of convening DPC on 15.09.2003. In respect of the applicant in the present O.A, his earlier O.A No.31/03 was disposed of by the order of this Tribunal dated 31.10.2006. The applicant has submitted that he was promoted during the pendency of his O.A No.31/2003. If he had any grievances regarding the date from which promotion was afforded to him, he should have taken up the matter then and there. He has received Annexure R-2 posting order dated 05.07.2004, promoting him in-situ at Custom House, Kochi from 15.09.2003. He has filed this O.A on 05.1.2011 with a prayer to set aside Annexure A-8 order dated 06.07.2010 by which a speaking order was given to him. The applicant has approached this Tribunal when his appointment in Group A was terminated with retrospective effect and recovery of over paid pay and allowances were ordered. Hence this Tribunal quashed and set aside such recovery order and disposed of the O.A with a direction to the respondents to consider his regular promotion as per the directions of the Mumbai Bench as explained in para 6 of the O.A. There was no direction to the respondents to issue a speaking order to him, but to implement the order of CAT Mumbai Bench in the case of the applicant also. Such a relief was granted in 2003 itself even though the order of this Bench was on 13.10.2006. The applicant got plenty of time during the pendency of the O.A, to raise the issue of his regular promotion in 1997 itself. Now the applicant has utilised Annexure A-8 to file the present O.A, only to overcome the issue of limitation.



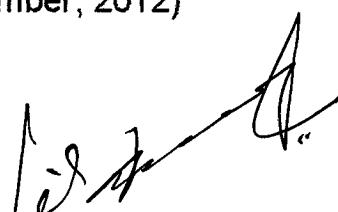
8. The respondents in their additional reply statement produced a copy of the promotion order of the applicants before this and Mumbai Bench (Annexure R-2). It is seen that two of applicant's seniors were promoted on 15.09.2003 along with him. In view of the submission made by the respondents that 16 vacancies in the year 1997-98 were under the direct recruitment quota, the clarification of DOPT that retrospective promotion cannot be given in Group A for vacancies arising in subsequent years and the fact that no junior to the applicant was promoted ahead of him, we do not find any merit in the O.A. The respondents are however ensuring that the promotees will get the seniority vis-a-vis the direct recruits of a particular year, as per the empanelment done by DPC year wise but retrospective promotion is not permissible.

9. In view of the foregoing, the Original Application is devoid of merit and it is accordingly dismissed. No costs.

(Dated, the 04th day of December, 2012)



K. NOORJEHAN
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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