

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.
XXXXXX

71/ 19889

DATE OF DECISION 20.11.1990

K.Sreedharan Applicant (s)

Shri R.Rajasekharan Pillai Advocate for the Applicant (s)

Versus

Union of India, represented by the Secretary, Ministry of Finance, New Delhi Respondent (s)
and 33 others

Mr.K.Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. A.V HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

(Hon'ble Shri S.P Mukerji, Vice-Chairman)

In this application dated 27.1.89 filed under Section 19 of the Administrative Tribunals Act, the applicant an Air Customs Officer under the Collector of Central Excise, Cochin has challenged the Seniority List of Inspectors of Central Excise at Annexure-B and has prayed that he should be declared to be entitled to confirmation in the post of Inspector, Central Excise right from the date of his appointment on 17.9.1974 as a Scheduled Caste candidate and given correct seniority accordingly. His further prayer is that respondents 2 and 3 should be directed to review all promotions made to the post of Superintendent from 1985 and on that basis give the

applicant promotion as Superintendent with retrospective effect from 1985. The brief facts of the case are as follows.

2. As a Scheduled Caste candidate the applicant was directly recruited as Inspector, Central Excise on 17.9.74. According to him on the basis of relevant orders he should have been confirmed as a Scheduled Caste candidate in 1974 itself and thus placed as senior to all temporary and officiating Inspectors recruited in 1974. His further grievance is that in the Seniority List of Inspectors as on 1.1.84 his name did not figure at all, as a result of which he was not considered for promotion as Superintendent, Central Excise in 1984, 1985 and 1986. His representation against omission of his name in the Seniority List of 1984 did not evoke any response. The respondents have since been issued a tentative Seniority List as on 1.1.86 at Annexure-B where he has been placed wrongly at Sl.No.106. According to him on the basis of his claim of being confirmed with effect from 17.9.74, he should have been ranked either at 30th or 67th place in the Seniority List. He has referred to a number of instructions issued by the Government in which it has been laid down that confirmed officers are to be placed senior to temporary or officiating officials. His further contention is that the Seniority List at Annexure-B is only tentative and not final and should

not have been relied upon for the purposes of promotion as Superintendent. His assertion is that promotion to the post of Superintendent before the Recruitment Rules were published in December 1986, was based on seniority subject to fitness and the DPC was to prepare two lists of eligible candidates, one for the General and the other ^{candidates} for the Scheduled Castes/Scheduled Tribes. The DPC which met on 31.7.85 considered the Seniority List of 1984, but since his name was not in that list, he was not considered. On the wrong premise that no eligible SC/ST officer was available within the normal zone of consideration, without extending the zone of consideration to five times the number of vacancies, in which case the applicant would have been considered, the respondents sought dereservation ^{reserved for the} of the two posts ^{of} _{for} Scheduled Castes/Scheduled Tribes.

This was turned down by the first respondent and a review DPC of 1985 was directed to be called. By this time the Seniority List of Inspectors was revised as on 1.1.86 and the review DPC which met on 6.12.86 did not consider the applicant for promotion as his name did not figure within the extended zone of consideration. The respondents 2 and 3 continued to make further promotions from the impugned Seniority List at Annexure-B without heeding the representations made by the applicant. Finally his representation was rejected by the order dated 24.5.88

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indicating that the applicant could not be promoted in 1985 and that no Scheduled Caste/Scheduled Tribe candidates were available for consideration within even ~~in~~ the ⁱⁿ extended zone of consideration before the DPCs held in 1986 and 1987.

3. The respondents have indicated that as an Inspector even though he was recruited on 17.9.1974, like all other direct recruits as well as promotees he had to be placed on probation for 2 years to be confirmed from the date of satisfactory completion of the probation. There is no distinction between Scheduled Caste/Scheduled Tribe and general candidates in the matter of confirmation. Reservation for confirmation is available only to direct recruits for whom there is a quota of 75% in the Inspector's grade. The applicant having been recruited on 17.9.74 as a direct recruit was eligible to be considered for confirmation in September 1976. They have explained that reserve vacancies upto 1976 were used up for confirmation of senior Scheduled Caste candidates. There were 32 vacancies in the cadre of Inspector of Central Excise in 1977 of which 24(75%) were for direct recruits. Two vacancies were for Scheduled Caste/Scheduled Tribe and these were given to one Shri N.Sasidharan, another Scheduled Caste candidate and the applicant. They have denied the averment of the applicant that he was not considered by the DPC in 1984, 1985 and 1986 because his name was omitted from the Seniority List as on 1.1.84.

The respondents have stated that the applicant could not be considered during these years as he was not senior enough to fall within the zone of consideration. The applicant could not be confirmed in 1975 and 1976 and hence the question of revising his seniority does not arise. They have denied that the post of Superintendents were filled up before the Recruitment Rules of 1986 on the basis of seniority and have stated that even prior to the issue of the Recruitment Rules the posts were treated as ~~selection posts~~. They have also explained that in 1985 two Scheduled Caste officers were available in the normal zone of consideration, but since they were not adjudged to be fit for promotion, dereservation was sought, but the Ministry directed that zone of consideration should be extended and Scheduled Caste candidates, if any, within the extended zone should be considered by a review DPC. When the review DPC met in December 1986 the revised Seniority List as on 1.1.86 was available, but again the applicant did not fall even within the extended zone of consideration.

4. In the rejoinder the applicant has stated that the review DPC should have considered the candidates on the basis of the Seniority List as on 1.1.84 after placing his name correctly in that list. Instead, the Review DPC wrongly considered the revised Seniority List as on 1.1.86. This revised Seniority List is based on the order dated 10.6.1986 by which, dates of confirmation

were revised in a number of cases. The applicant claims that being the senior-most Scheduled Caste Officer in the Select List of 1974, he should have been confirmed immediately on completion of his probation. It was also wrong on the part of the respondents to prepare panels on the basis of the tentative Seniority List as on 1.1.86 on which objections had been invited at Annexure-B. According to him, in accordance with the principle enunciated at Annexure-R1 he should have been confirmed as a Scheduled Caste candidate from the date of his appointment on 17.9.74. He has also alleged that reservation available to Scheduled Caste/Scheduled Tribe candidates have not been adhered to by the respondents. The applicant has since been promoted as Superintendent with effect from 10.1.89 but he claims promotion from February 1986.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant's main contention is that as a Scheduled Caste candidate, in accordance with the Ministry of Home Affairs O.M dated 12th March, 1984 at Annexure R1 he should have been confirmed as an Inspector right from the date of his appointment as a direct recruit on 17.9.74 and his seniority determined on such a date of confirmation. We have gone through Annexure R-1 and all other documents produced by the applicant and the respondents but nowhere we could get any indication that

a Scheduled Caste direct recruit appointed on probation would be confirmed from the date of his original appointment.

Para 4 of the O.M at Annexure R-1 indicates as follows:-

"After a careful consideration, it has been decided that since, initial appointment has been made against substantive vacancies, the probationers do not have to wait for permanent vacancies to occur and are confirmed after successful completion of the period of probation and also since the seniority is determined on the basis of the merit list prepared at the time of initial appointment, fresh reservation at the time of confirmation in such cases is not necessary." (emphasis added)

It is thus clear that date of confirmation cannot precede date of completion of probation. Since the applicant was appointed on probation on 17.9.74, the date of confirmation cannot be earlier than 17.9.76. The aforesaid quotation also indicates that there is no reservation at the time of confirmation. However, it goes without saying that since direct recruitment is resorted against substantive vacancies, probationers do not have to wait for such vacancies for confirmation. In that context we are inclined to accept the alternative claim of the applicant that if not from 17.9.1974, he should be confirmed as an Inspector at least from 17.9.1976. This should be accepted unless the respondents had taken a conscious decision to extend the period of probation. Since there is no such indication by the respondents, the applicant is entitled to be confirmed as Inspector with effect from 17.9.1976.

6. We see considerable force in the argument of the

learned counsel for the applicant that even though the

review made on 6.12.1986 to review the proceedings of the

had
DPC which met on 31.7.85, they could not consider the
revised Seniority List as on 1.1.1986. This list is
doubly inadmissible not only because it could not be
available on 31.7.85 but also because the tentative
Seniority List have not been finalised after considering
the objections which were invited at Annexure-B dated
10.6.1986. Merely because the review DPC in review of the
DPC of 31.7.85 met on 6.12.86 would not warrant consider-
ation of the revised Seniority List prepared subsequent
to 31.7.85 on the basis of the revised order of confirmation
issued on 10.6.86(Annexure-J).

7. The question is where in the Seniority List of
1.1.84 would the applicant's name figure. In the letter
dated 25.3.87 of the Commissioner for Scheduled Castes &
Scheduled Tribes at Annexure-I , the explanation given
by the respondents to the Commissioner has been quoted.
The relevant portion of this quotation is as follows:-

" A D.P.C was held on 31.7.85 based on a
seniority list of Inspectors as on 1.1.84 for
considering the case of Inspectors for promotion
to the Superintendent's cadre. As per the
findings of this DPC, 11 general category
Inspectors were promoted during the period from
August 85 to March 1986. Out of the 11 vacancies
against which these promotions were made, 2
vacancies were reserved for SC and one for ST.
2 SC officers were available for consideration
within the normal zone of consideration for
promotion as Supdt, but they were adjudged
'not fit' by the DPC. No ST officer was
available within the normal zone of consider-
ation. The one ST officer coming within the
extended zone of consideration was not consid-
ered for promotion by the DPC as he was not
having the requisite qualifying service.
As per the seniority list of the Inspector
as on 1.1.84, Shri Sasidharan No.1 would have
come within the extended zone of consideration

but he was not considered for promotion as 2 SC officers were already available in the normal zone of consideration. In this connection, it is to be pointed out that in the seniority list as on 1.1.84 Sri Sasidharan No.1 was wrongly occupying the place of Sri K. Sreedharan, another SC officer who had represented in the matter as he was senior to Sri Sasidharan. The mistake was rectified when the seniority list was subsequently revised and Shri K. Sreedharan, became senior to Shri N. Sasidharan. (emphasis added)

From the above it is clear that one Scheduled Caste Sri Sasidharan No.1 came within the extended zone of consideration but his position in the Seniority List of 1984 had been fixed wrongly which was later corrected by placing the applicant above him. Thus the applicant Sri Sreedharan, even otherwise, would have come within the extended zone of consideration even if his date of confirmation is not preponed from 1977 to 1976 as directed above. In the review DPC, however, he was not considered as the review DPC wrongly took into account the revised Seniority List of 1.1.86 instead of the Seniority List of 1.1.84.

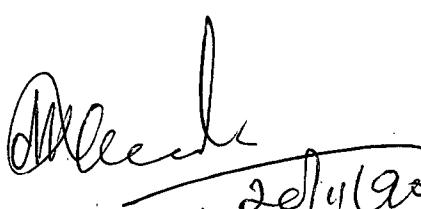
8. In the conspectus of facts and circumstances we allow the application to the extent of and on the lines indicated below:-

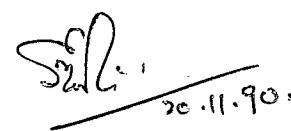
- (a) The applicant should be deemed to have been confirmed with effect from 17.9.1976 and his seniority in the Seniority List of 1.1.84 and in the Seniority List of 1.1.86 at Annexure-B should be redetermined.

(b) The proceedings of the review DPC which met on 6.12.86 for considering the cases of Scheduled Caste/Scheduled Tribe officers in the extended zone of consideration are set aside and the respondents are directed to reconvene the meeting of the review DPC as on 31.7.85 and consider the cases of Scheduled Caste/Scheduled Tribe officers falling within the extended zone of consideration in the Seniority List as on 1.1.84 in which the name of the applicant should figure on the basis of the revised date of confirmation as on 17.9.1976 and in any case above the name of Shri Sasidharan No.1.

(c) If the applicant is not included in the panel by the review DPC of 1985 he should be considered by the review DPC of 1986 and on the basis of his merit ranking given promotion as Superintendent on the basis of the outcome of the review DPCs of 1985 and 1986 with effect from the date his next ranking Scheduled Caste officer, if any, was promoted, with all consequential benefits.

(d) There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


S.P. MUKERJI
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

*K. Ann Mathew
R. Alles*

Dated the second day of February,
One thousand nine hundred and eighty nine.

Present

Hon'ble Shri G Sreedharan Nair, Judicial Member
and

Hon'ble Shri N V Krishnan, Administrative Member

ORIGINAL APPLICATION No.K-90/87

N Sasidharan

: Applicant

-Vs-

1 Collector,
Central Excise, Catholic Centre
Broadway, Ernakulam

} Respondents

2 Deputy Collector (P&E)
HQ. Catholic Centre
Broadway, Ernakulam

Mr R Rajasekharan Pillai

: Counsel of Applicant

Mr K Karthikeya Panicker, ACSSC

: Counsel of Respondents

ORDER

Shri N V Krishnan, Administrative Member

The grievance of the applicant, who belongs to a Scheduled Caste (S.C, for short) is that the Departmental Promotion Committee (DPC, for short) which met on 31.7.85 did not consider his case for promotion to the post of Superintendent, Central Excise though two vacancies ^{were} reserved for S.Cs. He has therefore, requested that the findings of the DPC be quashed or alternatively, a direction be

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issued for the convening of a meeting of the DPC to consider his case for assigning him an appropriate rank in the cadre of Superintendent Central Excise with retrospective effect.

2 The respondents have pointed out that the Union of India has not been impleaded though it is a necessary party and relying on the Supreme Court's judgement in Ranjit Mal Vs. General Manager, Northern Railway (AIR 1977-SC 1701), they have submitted that the application, therefore, deserves to be dismissed. We have considered this submission. It appears to us from a perusal of that judgement that the Union of India would be a necessary party in a case where an order of this Tribunal would impose a financial burden on the Union of India, particularly if it is of a recurring nature. The reliefs sought by the applicant as may be seen from para (1) even if allowed, will not have such consequence. Hence, we proceed to dispose of this case on merits.

3 The applicant's main contention is that the promotion to the post of Superintendent, Central Excise is to be made on the basis of seniority subject to fitness. In such cases, reservations are made for SC/ST candidates and promotions are required to be made in accordance with the OM dated 27th November, 72 (Annexure-1) of the Department of Personnel, Government of India. According to this OM a 40 point roster should be prepared in accordance with the earlier instructions on the subject and the specific posts which have to be filled up by SC/ST candidates should be determined. Thereafter, separate lists should be drawn up of the eligible SC/ST candidates, as the case may be, arranged in the order of inter-se seniority. More importantly, their claims for promotion should be adjudged by the DPC separately.

It is alleged that this procedure has not been followed in this case.

4 In that context, the applicant has referred to another procedure which governs promotions on the basis of selection. The reservations made for SC/ST candidates under this procedure is the same as in the procedure referred to in para 3 supra. The procedure for promotion requires that the candidates in the normal zone of consideration - which is 3 times the number

of vacancies- should be considered. If adequate number of SC/ST candidates are not available in this normal zone, the SC/ST candidates alone falling within the extended zone- which is 5 times the number of vacancies - should be considered.

5 The applicant's claim is that even if this was the procedure followed by the DPC, it had made a serious mistake. For, in the normal zone there were only 2 SC officials who had been repeatedly superseded earlier. Therefore, the DPC should have considered the names in the extended zone, wherein his name should have found a place on the basis of the seniority list as on 1.1.84 (Annexure-II). It is stated that, apparently, this DPC overlooked this requirement.

6 The applicant sent a representation in this regard on 19.3.86 (Annexure-III). (It may be added that Annexure III does not seem to be the representation against the DPC proceedings. It appears to be a representation against the seniority list as on 1.1.86). He was informed on 29.1.87 by Respondent No.1 that the action taken in the matter of promotion was correct (Annexure-IV).

7 The Respondents contend that the post of Superintendent, Central Excise is to be filled up by promotion on the basis of selection and not on the basis of seniority subject to fitness. It is

stated that for the preparation of a panel for promotion to the post of Superintendent, Central Excise against 11 vacancies, of which two were reserved for SC and one for a Scheduled Tribe candidate (ST for short), a DPC was constituted.

At a meeting held on 31.7.85, this DPC considered the names of 33 persons falling in the normal zone of consideration. As there were already two other SC candidates in the normal zone itself, this DPC considered that it was not necessary to consider any other SC candidate's names from the extended zone in which the applicant's name did find a place.

As the two SC officials in the normal zone were not found fit for promotion by the DPC, a panel of 11 names were prepared without any SC candidates being included therein.

8 Thereafter, proposals were sent for the de-reservation of these vacancies to Government. The Ministry thereupon advised that the intention behind the Department of Personnel and Training OM No.22011/3/76-Estt D dated 24.12.80 (not produced on record) - which refers to the zone of consideration was to ensure that sufficient numbers of SC/ST candidates were available for consideration - if necessary, from the extended zone if their number in the normal zone was not adequate. The Ministry, therefore, directed that a DPC Meeting should be held to review the proceedings of the earlier DPC. Such a review

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meeting was held on 6th December, 86. In the meanwhile, the seniority list in the lower grade of Inspectors of Central Excise had been revised for certain reasons. Based on this revised seniority list, the applicant's name did not figure even within the extended zone of consideration and hence his case for promotion was not considered by the DPC. The Respondents, therefore, contended that the procedure followed in this case for promotion was correct and cannot be assailed.

9 As some of the relevant instructions have not been brought on record a reference was made to the "Brochure on Reservation for SC/ST in services" (7th Edition), published by the Government of India, Ministry of Personnel, Public Grievances and Pension. The instructions relevant for the purpose of this case are as follows:

(a) The Department of Personnel OM No. 27/27/71-Estt (SCT) dated 27th November, 1972 deals with reservations for SC/ST on posts filled by promotion on the basis of seniority subject to fitness. A copy has been filed as Annexure-I. The procedure given in this OM is for all practical purposes the same as mentioned in para 3 supra.

(b) The reservations for SC/ST for promotions by selection, to posts in Class II service, were first made in the same Department's OM No.10/41/73-Estt

(SCT) dated 20th July, 1974. The percentage of reservations is the same as in the case at (a) above.

(c) A subsequent circular (OM No.22011/3/76-Estt (D)

was issued by the same Department dated 24th December, 80) explaining how promotions should be made on the basis of selection. The procedure laid down in this circular is substantially the same as indicated in para 4 supra.

10 Apart from their respective averments neither party has pointed out to any rule or instruction clarifying whether such promotions should be made on the basis of seniority subject to fitness or on the basis of selection. The applicant has stated in his rejoinder that it is only by a notification dated 17.12.86 that the "Superintendents of Central Excise Recruitment Rules 1986" have been notified. They provide for promotion on the basis of selection. Earlier to this, contends the applicant, the promotions used to be made on the basis of seniority subject to fitness. Even the DPC held on 31.7.85 had prepared the panel on the basis of seniority subject to fitness which could be ascertained by perusing the records of this meeting.

11 Accordingly, the records of the original DPC held on 31.7.85 and of the Review DPC held on 6.12.86 were obtained from the respondents and

perused. We notice that the DPC Meeting held on 31.7.85 followed the procedure applicable to filling up of posts by promotion on the basis of selection. These records also fully corroborate the Respondent's version at para 7 & 8 supra. In the "Consideration List" (i.e., the list of names arranged on seniority basis) put up to the DPC on 31.7.85, the applicant's name is at Sl.No.46. He was not considered because two SC candidates were available in the normal zone. This list was prepared "keeping in view the clarification given in Board's letter F No.B 12014/2/84-Ad.IIIA(ii) dated 12.7.85 regarding seniority of Inspectors (Ordinary Grade) appointed on or after 1.8.72 to be determined in the ratio of 3 DRs : 1 Promotee". - as stated in the office note. In the similar list put up before the DPC for the review meeting on 6.12.86 the applicant's name is at Sl.No.77 i.e., very much beyond the extended zone of consideration. This is a revised list prepared in the light of the instructions contained in the letter dated 12.7.85 referred to above and also the Board's letter F No.B 22013/34/80 Ad.II B dated 20.5.80 and Ministry of Home Affairs, Department of Personnel & Administrative Reforms OM No.36011/28/83-Estt (SCT) dated 12.3.84.

12 It is thus clear that the DPC meeting held on 31.7.85 proceeded to prepare a panel on the 'Selection' basis. Further, on the admission of the of the applicant himself, it appears that, even earlier, such promotions were made on the basis of 'selection'. For, in para-6 of his application it is submitted that " in all the previous Departmental Promotion Committees the SC/ST officers in the extended zone, whose name appear at Sl No. 131, 132 and 142 were considered". As the zone of consideration is relevant only for promotion by selection, it is clear that it was this principle that governed the promotion to the post of Superintendent, Central Excise.

13 It is only necessary to add that the "Superintendents of Central Excise Recruitment Rules, 1986" notified on 17.12.86, which came into force on the date of their publication in the gazette, a/ copy of which was given by the Respondents do not also give a clue as to what was the basis for promotion before the enforcement of these Rules. It should be noted that the review DPC was held before these Rules came into force.

14 We, therefore, find that the promotion to the post of Superintendent Central Excise used to be filled up by promotion on the basis of selection and not on the basis of seniority subject to fitness, and the proper procedure has been followed by the Respondents.

It is true that the DPC did not refer to the extended zone of consideration at its meeting held on 31.7.85 though the names in the extended zone (including the applicant's name) were before it and though such a reference was warranted. This mistake was rectified at the instance of the Ministry by holding another DPC meeting on 6.12.85 to review the earlier proceedings. The applicant's name, however, did not figure even in the extended zone on the revised basis of the seniority list considered by the DPC. Hence, his case for promotion was not considered.

15 We are, therefore, of the view that, in the circumstances of this case, the applicant cannot have any grievance against the final minutes drawn up by the second DPC meeting held on 6.12.86. If at all he has any case it could be only against the revised seniority list on the basis of which the "Consideration List" was prepared, for/by this DPC, as his name did not figure in that list in the extended zone. However, that seniority list is not in challenge in this application.

16 In the result, we find that the grievance made out by the applicant is not justified and therefore, his application is rejected.

Sd/-
VV (NV Krishnan)
Administrative Member
2.2.89

Sd/-
(G Sreedharan Nair)
Judicial Member
2.2.89



TRUE COPY

Dated 21.2.89

Deputy Registrar

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