

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.79/2001

Thursday this the 14th day of March, 2002.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.V.Bhaskaran,
Superintendent, Cochin
Custom House(Retired), "Surabhi",
Chembumukku,
Thrikkakara P.O.
Ernakulam.

.. Applicant

(By Advocate Sri N.N.Sugunapalan)

vs.

1. Commissioner of Customs, Custom House,
Willingdon Island, Cochin-9.
2. Joint Commissioner of Customs(P&B),
Office of the Commissioner of Customs,
Custom House, Cochin-9.
3. Union of India represented by Secretary,
Ministry of Finance, New Delhi-1.

.. Respondents

(By Advocate Sri C.Rajendran, SCGSC)

The Application having been heard on 23.1.2002, the
Tribunal on 14.3.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant a member of Scheduled Caste, while working as Preventive Officer in the Customs Department at Kochi was placed in the panel by the Departmental Promotion Committee for promotion as Superintendent of Customs against a vacancy reserved for SC which arose on 1.6.94. However the selection of the applicant was challenged by a Preventive Officer junior to the applicant in O.A.No.186/1994 and connected cases, on the ground that if he was promoted, the members of SC would exceed the quota reserved for that category in the cadre of Superintendent.

Though the applicant contended that the operation of the post-based roster for reservation in terms of the judgment of the Hon'ble Supreme Court in R.K.Sabharwal and others vs. State of Punjab, 1995(2)SCC 745, would be only prospective, the Tribunal held that as the applicant had not been promoted till 10.2.95 he could not be promoted because his promotion would bring in excess representation in the cadre of Superintendent of Customs and allowed the O.A. The applicant and others who are similarly affected by the judgment carried the matter before the Apex Court. The Hon'ble Supreme Court in its order in Civil Appeal No.10658-59 of 1996 held that as the decision of the DPC as also that of the appointing authority to appoint the applicant was prior to the judgment in R.K.Sabharwal's case, the Tribunal committed an error in applying the decision in R.K.Sabharwal's case to the case. Therefore the judgment of the Tribunal was set aside by order dated 18th March 1999. Although the applicant was in service at that time and represented that he be promoted with effect from the relevant date, no action was taken by the respondents. The applicant therefore caused a lawyer notice to be issued to the respondents on 3.7.2000. The Joint Commissioner of Customs informed the applicant's counsel that he wanted more time to implement the judgment of the Apex Court. Ultimately by an order dated 17.11.2000 (Annexure A5) the first respondent promoted the applicant who had by then retired as Superintendent of Customs, Preventive, with effect from 30.9.94 on ad hoc basis, but denying the applicant the arrears of pay and allowances on account of the promotion excepting pay fixation for the purpose of retiral benefits.

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Aggrieved by the denial of consequential benefits of arrears of pay and allowances , the applicant has filed this application for quashing the Annexure A5 order in so far it denies the financial benefits to the applicant from 30.9.1994 such as arrears of pay, allowances due to him as Superintendent of Customs from that date with 18% interest per annum. It is alleged in the application that as the applicant was denied the opportunity of working in the post of Superintendent of Customs with effect from the due date, the denial to him of the monetary benefits flowing from retrospective promotion is illegal and unjustified.

2. The respondents in their reply statement contend that because of the interim order of the Tribunal to maintain status-quo, the applicant could not be promoted , that as a copy of the judgment of the Apex Court reversing the decision of the Tribunal against the applicant was received only late, the competent authority has after convening a review DPC promoted the applicant as Superintendent of Customs, Preventive, on ad hoc basis notionally with effect from 30.9.94, that as per the rules and instructions on the subject arrears of pay and allowances are not to be given in the case of notional promotion, and that therefore the applicant is not entitled to the reliefs sought. It has further been contended that the applicant was also not very prompt in making the representations claiming promotion even after the disposal of the civil appeal by the Apex Court and that as the

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benefit of placement in the higher grade under the Assured Career Progression Scheme was given to the applicant in the year 1999, the applicant having not suffered any detriment, the application is only to be rejected.

3. We have carefully gone through the pleadings and materials placed on record and have heard the arguments of Sri N.N.Sugunapalan, learned counsel of the applicant and of Sri C.Rajendran, Sr.Central Govt. Standing Counsel.

4. The only question that calls for a decision in this case is whether the applicant who was denied promotion on the basis of the panel prepared by the DPC with effect from 30.9.94 is now on retrospective promotion with effect from that date on notional basis by order dated 7.11.2000 entitled to the arrears of pay and allowances and whether the provision in the impugned order that the applicant would not be entitled to any arrears of pay and allowances is justified. The Hon'ble High Court of Kerala in Sivarajan vs. State of Kerala, 1993(2)KLT 287, considered a similar question as involved in this case. The Hon'ble Court held that when a Government servant failed to get his promotion for no fault of his and is subsequently found entitled for such promotion and is promoted, to order that he would not be entitled to the benefit of arrears of salary on the ground that the promotion is retrospective and notional, is unjustified. In Union of India vs. K.V.Jankiraman, AIR *1991 SC 2010, the Apex Court has held that when an employee is not promoted for no fault of his and is found to be not blameworthy, it is unjust to deny to him the pay and

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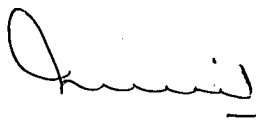
allowances of the promotional post if ultimately promoted with retrospective effect. The principle enunciated in the above authorities that if an employee eligible to be promoted is denied promotion for no fault of his should not be denied the benefits of promotion merely because of the fact that he did not shoulder higher responsibilities is applicable to the facts of this case also. The non-promotion of the applicant with effect from 30.9.94, though his name was placed in the panel by the DPC and the competent authority decided to promote him was on account of a wrong application of law laid down by the Apex Court in R.K.Sabharwal's case. Since the judgment of the Tribunal in O.A.No.186/94 and connected cases was set aside by the Hon'ble Supreme Court vide its judgment in Civil Appeal No.10658-59 of 1996, the respondents should have given the applicant, what has been wrongly denied to him including the arrears of pay and allowances of the promoted post. That the applicant was not prompt in making representations seeking implementation of the Supreme Court judgment is no answer for the applicant's claim for arrears of pay and allowances with interest. The respondents should not have waited for the applicant to make a representation before doing justice to him on the basis of the judgment of the Hon'ble Supreme Court.

5. The applicant has claimed interest at 18% per annum on the arrears of pay and allowances of the promoted post with effect from 30.9.1994. The respondents can be directed to pay interest at market rate only in case there is a culpable delay on their part in either giving the applicant

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promotion or disbursement to him of the arrears of pay and allowances. The non-promotion of the applicant on 30.9.94 was on account of the interim order issued by the Tribunal in O.A.No.186/94 . Therefore it cannot be said that there was a culpable delay. The interest payable to the applicant on the arrears of pay and allowances therefore would be only at the rate of 6% per annum.

6. In the result, the application is allowed in part. The stipulation in the impugned order that the applicant would not be entitled to any arrears of pay and allowances etc. is set aside and we direct the respondents to disburse to the applicant the arrears of pay and allowances consequent on his promotion as Superintendent of Customs with effect from 30.9.1994 with interest at 6% per annum from the due date till the date of payment. The above directions shall be complied with and payment made as expeditiously as possible, at any rate, within a period two months from the date of receipt of a copy of this order. There is no order as to costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. Annexure A1 True copy of order dated 22.9.1995 of this Hon'ble Tribunal in O.A. No.186/94.
2. Annexure A2 True copy of judgment of the Hon'ble Supreme Court of India in Civil Appeal No.10658-59/96.
3. Annexure A3 True copy of lawyer notice dt. 3.7.2000 sent by the applicant's lawyer to the Commissioner of Customs, Cochin.
4. Annexure A4 True copy of reply dt. 19.7.2000 sent to the lawyer's notice by the Joint Commissioner of Customs, (P&V)
5. Annexure A5 True copy of order No.163/2000 sent by the Commissioner of Customs, Cochin dated 17.11.2000.
6. Annexure A6 True copy of the representation dated 7.10.96 addressed to the 1st respondent.

Respondent's Annexures :

1. Annexure R1A Photocopy of the order dated 22.9.1995 in O.A.Nos.186/94 and 961/95 of the Central Administrative Tribunal, Ernakulam Bench.
2. Annexure R1B Photocopy of the order in C.A. 10658/96 and 10659/96 dated 18.3.1999 of the Hon'ble Supreme Court of India.
3. Annexure R1C Photocopy of the representation dated 1.4.2000 filed by the applicant along with his earlier representation.
4. Annexure R1D Photocopy of the order No. 15/2000 dated 24.1.2000 issued by the Commissioner of Customs, Kochi.