

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 6.9.93

O.A. 84/92

T.O. Padmakshan
Preventive Officer
Customs House,
Cochin-9

Applicant

vs.

1. Collector of Customs
Customs House, Cochin-9
2. Central Board of Excise and
Customs, Ministry of Finance
New Delhi
- 3- K. Muraleedharan Nair, PO
Customs House, Cochin
4. V.S. Sasidharan, PO,
Customs House, Cochin
5. Smt. V.N. Lakshmykutty, PO -do-
6. M.V. Subramaniam, PO, -do-
7. K.N. Sadanandan, PO -do-
8. A. Ramachandran, PO, -do-
9. T.S. Madusoodanan, PO, -do-
10. S.K. Dinesan, P.O., -do-
11. Xavierkutty Joseph, PO, -do-
12. B. Rajan, PO, -do-
13. K. Haridasan, PO, -do-
14. M.O. Varhese, PO, -do-

Respondents

Mr. V. Rajendran

Counsel for
applicant

Mr. George C.P. Tharakan, SCGSC

Counsel for
R 1 & 2

Mr. M.R. Rajendran Nair

Counsel for
R -6

Mr. Vellayani Sundararajan

Counsel for R-5, 9
and 13

Mr. B. Gopakumar

Counsel for R-3
& 4

CORAM

THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

&

THE HON'BLE MR. R. RANGARAJAN ADMINISTRATIVE MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The applicant is a physically handicapped employee working as Preventive Officer under the first respondent. He is aggrieved by the denial of the respondents to promote him to the post of Preventive Officer from the date on which respondents 3 & 4, juniors of the applicant, were promoted to the post of Preventive Officer.

2. The Recruitment Rule for promotion to the post of Preventive Officer is Annexure-III. Seventy Five percentage of the posts is ^{filled up by} direct recruitment and 25% by promotion. According to applicant, he satisfies all the essential requirement for promotion within the promotion quota under the Recruitment Rules. He was fully eligible to be promoted to the post of Preventive Officer from 27.10.87; but he was not given opportunity to establish his physical fitness as per the Recruitment Rules Annexure-III. Two of the juniors of the applicant, respondent No. 3 and 4, were promoted to the post of Preventive Officer without considering the claim of the applicant. Later Respondents 5 to 14 (except R-12) were also given promotion as per the dates given in para 8 of the original application, which is extracted below:

"	
5th respondent	7.8.89
6th respondent	7.8.89
7th respondent	7.9.89
8th respondent	7.9.89
9th respondent	7.9.89
10th respondent	6.3.90
11th respondent	6.3.90
12th respondent	4.4.90
13th respondent	6.3.90
14th respondent	6.3.90 "

The applicant filed Annexure-IV representation for consideration for promotion to the post of Preventive Officer. That representation was forwarded to the Ministry and ultimately Annexure-I order has been passed. The said order is challenged in this original application.

3. The respondents 1 & 2 and the contesting respondents have filed separate reply^{stalemate}. According to them, the applicant was originally appointed as LDC in the quota earmarked for handicapped persons as per Annexure R-1. The post of Preventive Officer is not included among the posts earmarked for handicapped persons. It is further submitted that it is not the practice to consider physically handicapped employees for promotion to the cadre of Preventive Officer. Hence, the applicant was not considered for promotion to the post of Preventive Officer when his juniors R-3 and R-4 were considered. They have also produced Annexure R-2 letter received from the Govt. directing the Department to promote the applicant as Preventive Officer if he is physically fit and satisfies all other conditions. Annexure R-4 is a further letter issued by the Central Board of Excise and Customs accepting Annexure-II and clarifying that the applicant should be given opportunity for establishing physical fitness for giving promotion to the post of Preventive Officer.

4. The applicant has also brought to our notice Annexure -V order by which the applicant has been promoted as Preventive Officer w.e.f. 11.4.90. The applicant's main complaint is that he was eligible for promotion when his juniors R-3 and R-4 were promoted.

5. It is an admitted fact that the applicant was not considered for promotion in spite of the fact that Annexure ~~III~~ does not debar physically handicapped person from being considered for promotion to the post of Preventive Officer. The case of the respondents xx that physically handicapped person is not eligible to be considered in view of Annexure R-1 order cannot be accepted. Annexure R-1 is only identifying certain posts earmarked for handicapped persons for the purpose of reservation and appointment in that quota. We have gone through the O.M. We are satisfied

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that it has nothing to do with the promotion of the handicapped employee to the post of Preventive Officer.

His request for consideration cannot be denied. Annexure -
thereof ⁴
~~and the provisions~~ do not debar the applicant ⁴ from a
consideration for promotion to the post of Preventive Officer.

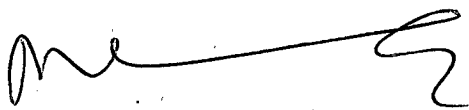
In spite of Annexure R-2, the respondents have denied
consideration of the applicant. ⁴ ~~It is clear from~~ Annexure R-2
that,

after careful consideration of the claim of the applicant,
the Government have taken a decision that the applicant is
eligible to be considered for promotion if he is physically
fit and satisfies all other conditions and standards
prescribed under the Recruitment Rules for promotion to the
post of Preventive Officer. There is no justifiable reason
for not complying with the direction in that letter. After
Annexure R-2, the applicant has a legal right to be
considered for promotion to the post of Preventive Officer
and establish his merit. This was accepted by Board in Ann.R4

6. In this view of the matter, we quash Annexure A-I
and declare that the applicant is entitled to be considered
for promotion to the post of Preventive Officer w.e.f. the
date of Annexure R-2. The respondents shall consider the
claim of the applicant for be considered for promotion to the
post of Preventive Officer as on 16.5.88 and promote him, if
he is found fit. ⁴ ~~with all~~ consequential benefits.
This shall be done within a period of two
months from the date of receipt of the copy of the judgment.

7. The application is allowed as above.

8. There shall be no order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


(N. DHARMADAN)
JUDICIAL MEMBER
6.11.93

6.9.93

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List of Annexures

1. Annexure-III : Recruitment Rules to the post of Preventive Officer
2. Annexure-IV : Representation of the applicant dated 27.10.87
3. Annexure R-1 : O.M. dated 8.12.80 issued by Department of Personnel & A.R.
4. Annexure R-2 : Letter dated 16.5.88 from Department of Revenue
5. Annexure R-3 : Representation of the applicant dated 12.7.88
6. Annexure R-4 : Letter dated 15.3.90 from Central Board of Excise and Customs
7. Annexure A-I : Impugned order dated 4.1.92