

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 126/90
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DATE OF DECISION 23.10.90

E. Komalam Applicant (s)

M/s M.R. Rajendran Nair &
P.V. Asha Advocate for the Applicant (s)

Versus

Union of India (Secretary, Respondent (s)
Ministry of Finance) & another.

Mr. A.A. Abul Hassan, 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? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Shri S.P. Mukerji, Vice Chairman)

This is the third time that this lady who is now working as Inspector of Central Excise in Ernakulam Division has been driven to approach the High Court/Tribunal for redress. Her grievance is that she had been deprived of the benefit of regular promotion as Inspector of Central Excise ever since her selection and promotion on 27.8.81. For certain personal reasons at that time, she did not want to be promoted as an Inspector from the post of Stenographer and the order of her promotion was cancelled with the indication that she would be re-promoted only after 6 months. This bar of six months was extended to 12 months

by a general order on 26.9.81, but by a further order dated 22.1.82 (Annexure-XIII) the embargo against the promotion for the period of one year was made applicable only to those who were to be promoted on 1.10.81. Since the applicant's promotion had materialised in August 1981, she was to be subjected to only six months embargo, but the order of 22.1.82 had either not been received or misplaced by the office of the respondents as a result of which the bar of 12 months was imposed on the applicant who also was ignorant about the exemption order dated 22.1.82 until she represented on 17.2.89. In her innocence she expressed her willingness to be promoted as Inspector, 12 months after her selection and sought to be considered for selection again in July, 1982. She was selected for ad hoc promotion on 24.5.83, reverted as Stenographer on 25.11.83 and on the basis of her earlier request, promoted as Deputy Office Superintendent on 26.11.83. The order of reversion was stayed by the Collector of Central Excise and all those who had been promoted as Inspectors along with the applicant in May 1983 were re-promoted as Inspectors in the scale of Rs. 425-800 but the applicant was allowed to continue as Deputy Office Superintendent in the scale of Rs. 425-700. In December 1984, when all the Inspectors were considered for regularisation by the DPC, the applicant was singled out as she was working in the ministerial

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cadre, even though she, along with them, had been selected as Inspectors on 24.5.83. To add to her misery, she was reverted even from the post of Deputy Office Superintendent to the post of Stenographer on 23.8.85 to give place to a senior Stenographer. She challenged the reversion order in the High Court in O.P.8181/85. The High Court stayed the order of reversion. She again appeared for selection as Inspector and was selected for the third time on 7.11.86 and was promoted as Inspector on 12.12.86 on an adhoc basis as the DPC of 1984 was challenged by some others. On 18.2.87, the selections made by the DPC in 1984 was set aside by the Tribunal with the direction that Review DPCs for all promotions between 1984 and 1987 should be held. The Review DPC accordingly met on 20.7.88 and found her to be not fit. She was reverted from the post of Inspector to that of Deputy Office Superintendent on 1.8.88. She challenged the order of reversion before the Tribunal in OAK 380/88 praying that she should have been regularised along with other Inspectors who had been reverted with her on 25.11.83. Again she offered herself for promotion as Inspector and on 13.7.89 she was selected for the fourth time and promoted as Inspector on 13.7.89. In the meantime, she had represented on 17.2.89 claiming the benefit of the exemption order dated 22.1.82 regarding one year embargo and sought to be promoted as Inspector

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in the first vacancy after 27.2.82, i.e. six months after her first promotion order of 27.8.81. That representation is still pending. On 28.8.89, the Tribunal passed final orders on her writ petition before the High Court O.P.8181/85 which had been transferred to the Tribunal as TAK 553/87. The Tribunal directed that the respondents should consider her representation stating her grievance pertaining to her claim of promotion as Inspector in the event of her reversion from the post of Deputy Office Superintendent which materialised on 23.8.85. Accordingly, the applicant filed a representation on 11.9.89 claiming regular promotion with effect from 27.2.82. On 27.11.89 the Tribunal passed final orders in OAK 380/88 giving her the benefit of her regular selection and promotion on 27.3.81 but giving her the benefit of seniority from 24th May 1983 when she was actually promoted as Inspector.

3. The respondents filed a review application against this order which was dismissed on 19.1.90. On 31.1.90 by the impugned order at Annexure-I, the respondents rejected her representation dated 11.9.89 in implementation of the order of the Tribunal dated 28.8.89 in TAK 533/87. The representation was rejected without even considering the same on the ground that the representation sought promotion as Inspector from 1982 whereas, in accordance with the directions of the Tribunal, she was entitled to represent for claiming promotion as Inspector

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from 1985 only. The order of rejection was however made subject to the final implementation of the order of the Tribunal dated 27.11.89 in OAK 380/88. Thus, the applicant stands as she was, without any benefit of the reliefs given by the Tribunal in the transferred writ petition 533/87. Her representation which she filed under the direction of the Tribunal in TAK 533/87 on 11.9.89 has not even been considered by the respondents and rejected in limine on the ground that it transgressed the limit laid down by the Tribunal. Her representation dated 17.2.89 claiming the first vacancy after 27.2.82 also remains undecided.

4. In this application dated 8.2.1990, the applicant has prayed that the impugned order dated 31.1.90 rejecting her representation in limine without considering the same should be set aside and she should be declared to be entitled to be re-promoted as Inspector, Central Excise, with effect from the date of occurrence of the vacancy, six months after the date of Annexure-III order (i.e. 22.9.81) by which she was to be promoted six months after the date of that order or the occurrence of the next vacancy, whichever is later. She has also prayed that all consequential benefits including seniority and arrears of salary with interest. Her argument is that the relief claimed by her in the writ petition No.8181/85 (TAK 533/87) was that in the event of her reversion from the post of Deputy Office Superintendent she should be considered for

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promotion as Inspector. This did not mean that the promotion would take effect after her reversion which took place on 28.8.85. Her reversion from Deputy Office Superintendent has nothing to do with her claim for promotion as Inspector from 1982. She has also argued that by not considering her representation at all, the respondents have violated the Tribunal's judgement dated 28.8.89 (Annexure-XV). By virtue of the judgement of this Tribunal in OAK 380/88 dated 27.11.89 (Annexure-XVII), she is entitled to be re-promoted on the basis of her 1981 selection after six months embargo. The embargo of one year was not applicable to her in view of the orders dated 22.1.82 and 19.7.82 at Annexures-XIII and XIII-A.

5. The respondents have stated that in compliance with the judgement of the Tribunal dated 27.11.89 in OAK 380/88 the applicant is being deemed to have been promoted as Inspector on the basis of her selection in 1981 and given seniority from the date she took over as Inspector on the basis of the order dated 24.5.83. Since the impugned order dated 31.1.90 is subject to the implementation of the Tribunal's order in OAK 380/88, the applicant should have no grievance. The representation dated 11.9.89 was rejected as it was filed not in line with the specific directions of the Tribunal in TAK 533/87. They have clarified that ever since her promotion as Deputy Office Superintendent on 26.11.83 till she was reverted on 23.8.85,

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the applicant did not express any desire to work as an Inspector and it was only in the writ petition before the High Court that one of the reliefs sought was that in the event of her reversion from the cadre of Deputy Office Superintendent, Level-II, she should be appointed as Inspector of Central Excise. The respondents have conceded that the O.M. dated 22.1.82 clarifying that the embargo of one year will not be applicable in the case of promotions made between May and September 1981 "does not appear to have been received in the concerned Section" and the applicant also did not bring it to the notice of the Department till February 1989." They have also explained that no decision could be taken on her representation dated 17.2.89 because the original application regarding the applicant's promotion as Inspector was being considered by the Tribunal. In the representation dated 17.2.89 the applicant had requested that she may be promoted as Inspector with retrospective effect from the date of occurrence of the first vacancy after 27.2.82.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It will be useful to chart out the events of the case in a chronological order as indicated below:

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1. The applicant joined service as Stenographer ordinary grade - 4.10.75
2. Promoted as Inspector (Rs 425-800) in officiating capacity - 27.8.81 (Annexure-II)
3. Order of promotion cancelled as requested by the applicant, with the assurance of re-promotion after 6 months of the date of the order or when the next vacancy arises, whichever is later. - 22.9.81 (Annexure-III)
4. Embargo on promotion increased from six months to 12 months. - 26.9.81
5. Increased embargo of one year lifted in cases of promotion between 1st May and 30th September 1981 by order dated 22.1.82 - 22.1.82 (Annexure-XIII)
6. Applicant expressing willingness to be promoted as Inspector - 14.7.82 (Annexure-IV)
7. Applicant informed that promotion will be re-considered only after one year instead of 6 months - 28.7.82 (Annexure-V)
8. Applicant promoted along with 6 others again as Inspector after physical and other tests on ad hoc basis without any claim of seniority, applicant being at the top of the list. - 24.5.83
9. The applicant requested for appointment as Deputy Office Supdt. - 22.7.83
10. Applicant and 8 others reverted as Steno/UDC w.e.f. 26.11.83 - 25.11.83 (Annexure-VII)
11. Applicant promoted as Dy. Office Supdt. (Rs 425-700) on adhoc basis subject to termination when regular incumbent arrives. - 26.11.83 (Annexure-VIII)
12. Order of reversion (Annexure-VII) stayed until further orders (All, except the applicant, continued as Inspector while the applicant continued to work as Dy.O.S.) - 1.12.83 (Annexure-IX)
13. Departmental Promotion Committee met for regularising all Inspectors without considering the applicant as she had been working in the ministerial cadre of Dy.O.S. - 4.12.84
14. Applicant reverted from the post of Dy.O.S. to that of Stenographer to give place to the selected candidate. Orders stayed by the High Court in OP 8181/85, transferred to the Tribunal as TAK 533/87 - 23.8.85
15. Applicant selected again as Inspector through tests by the D.P.C. - 7.11.86
16. Applicant promoted as Inspector on an ad hoc basis as the DPC of 1984 had been challenged. - 1.12.86
17. Proceedings of the DPC of December 1984 set aside. - 18.2.87
18. Meeting of the Review DPC for the years between 1984 and 1987 held under the directions of the Tribunal. - 20.7.88 (The applicant was considered and found unfit for promotion)

19. Applicant reverted as Dy. O.S. - 1.8.88 (Annexure-XI)
20. Order challenged by the applicant in OAK 380/88 - 4.8.88
21. Applicant represented that on the basis of the exemption order dated 22.1.82 the embargo on her promotion as Inspector was to be for six months and she should be promoted as Inspector w.e.f. the date of occurrence of first vacancy falling after 27.2.82 with all consequential benefits including seniority and arrears. (representation is still pending) - 17.2.89 (Ann. XIV)
22. Applicant selected and promoted as Inspector for the fourth time. - 13.7.89 (Annexure-XII)
23. Judgement of the Tribunal in TAK 533/87 directing filing and disposal of representation regarding applicant's promotion as Inspector. - 28.8.89 (Annexure-XV)
24. Representation filed by the applicant as directed by the Tribunal claiming promotion w.e.f. 22.1.82 enclosing also a copy of the representation dated 17.2.89. - 11.9.89 (Ann. XVI)
25. Judgement of the Tribunal in OAK 380/88 setting aside the order of reversion dated 1.8.88 (Ann.XI) and giving the benefit of regular promotion on the basis of the 1981 order (Ann. II) and giving seniority as Inspector from 1983 without arrears of pay. - 27.11.89 (Ann. XVII)
26. Review application challenging benefit of 1981 selection filed by respondents in OAK 380/88. - 21.12.89 (Ann. XVIII)
27. Review application dismissed on the ground that relief given in OAK 380/88 was not in excess of the relief claimed. - 19.1.90 (Ann. XXI)
28. Impugned order rejecting the representation of the applicant dated 11.9.89 (Ann. XVI) without considering the same, but subject to the final implementation of the order of the Tribunal in OAK 380/88 - 31.1.90
29. Clarificatory order on M.P.255/90 in OAK 380/88 clarifying that grant of seniority based on the order of 24th May 1983 by the judgement dated 27.11.89 will not preclude the applicant from seeking earlier date of promotion as Inspector and consequential benefits in accordance with law. - 29.3.90 (Ann. XXIII)

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7. In the aforesaid conspectus of facts and circumstances, in our judgement dated 27.11.89 we directed as follows:

"....we allow the application, set aside the impugned order dated 1.8.88 reverting the applicant as Deputy Office Superintendent and direct the respondents to give her regular promotion as Inspector on the basis of her selection in 1981 on the basis of which the order at Annexure-I dated 27.8.81 was passed. Her seniority will be counted with effect from the date she took over as Inspector on the basis of the order dated 24th May 1983 at Annexure-5 as if she had continued as Inspector since then. No arrears of pay and allowances or increments for the period she actually worked in lower grades will be allowed. There will be no order as to costs."

We thought that since the applicant had been regularly selected as Inspector in 1981 the order dated 27.8.81 would give her the limited benefit of exempting her from subjecting herself to further selection even though she volunteered herself to be assessed and selected as many as four times till 13.7.89. We advisably did not allow the entire benefit of the promotion order of 27.8.81 (Ann. II) because she herself declined the promotion and came under the embargo of being barred for promotion for six months, later wrongly extended by one year. Her seniority was to be counted from the date she took over as Inspector on the basis of the order dated 24th May 1983 as she was nothing to show that there was any vacancy to which she could have been promoted after the expiry of one year from 22.9.81 (Annexure-III) and May 1983. The contention of the

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respondents in the Review Application that we had gone beyond the relief claimed by the applicant was repelled by us by our judgement dated 19.1.90 at Annexure-XXI in following terms:

"The apprehension of the learned counsel for the original respondents is that by our order dated 27th November 1989 the applicant has been given more relief than she actually prayed for and that is promotion from 27.8.81. This apprehension of the learned counsel is unwarranted because in our order we had specifically indicated that the original applicant will be deemed to have continued as Inspector and her seniority in that cadre will be counted "with effect from the date she took over as Inspector on the basis of the order dated 24.5.83 at Annexure-5 as if she had continued as Inspector since then. This was done on the basis of her previous selection in 1981. It was also made clear that no arrears of pay, allowances or increment for the period she actually worked in lower grades will be allowed. From the perusal of the original application also it is clear that the applicant had prayed for the benefits arising out of Annexure-5 which is the same as the order dated 24.5.83 referred to in our judgement. Accordingly we see no force in the Review Application and dismiss the same."

We therefore feel that in accordance with law and facts no further review of advancing the date of promotion or giving additional benefits of seniority and arrears of pay can arise. Our order dated 29th March 1990 entitles the applicant to raise this question, but does not entitle her to receive the benefits if they are not in accordance with law.

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8. So far as the impugned order dated 31.1.90 at Annexure-I rejecting the applicant's representation claiming regularisation with effect from 27.2.82 is concerned, it will be useful to recall the reliefs claimed by her in the transferred writ petition No. TAK 533/87 which was decided by the order of this Tribunal dated 28.8.89 at Annexure-XV.

"The petitioner may file a detailed representation before the first respondent within two weeks from today stating her grievances in detail pertaining to the 4th relief in the application as extracted above. If such a representation is filed by the petitioner within the time stipulated above, the first respondent shall consider the same and dispose of the same on merits within a period of 4 months from the date of receipt

The fourth relief referred to in the above order was as follows:

"To direct the respondent No. 1 to appoint the petitioner as Central Excise Inspector in the scale of pay of Rs. 425-300, in the event of her reversion from the post of Deputy Office Superintendent Level II."

9. It is a sequel to the aforesaid direction of the Tribunal that the applicant filed the representation dated 11.9.89 at Annexure-XVI. In that representation she also brought in her representation dated 17.2.89 at Annexure-XIV. In both these representations she had been claiming regular promotion as Inspector against the first vacancy after 27.2.82, i.e. six months after the expiry of the promotion order dated 27.8.89 (Ann.II)

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which she had declined. As stated earlier, the claim of her promotion from an earlier date had been disposed of finally by our judgement dated 28.7.89 in OAK 380/88. The learned counsel for the applicant vehemently argued that the applicant would be entitled to the first vacancy arising after the expiry of six months from 22.9.81 (Annexure-III) and not after one year, because the applicant's case is covered by the order dated 22.1.82 (Annexure-XIII) by which promotions between 1st May 1981 and 30.12.81 are to be covered by the embargo of six months and not by the extended embargo of one year. History say that the applicant did not know about the order of 22.1.82 till February 1989 when she represented on 17.2.89 claiming first vacancy after 27.2.82. If that was so, the applicant should have modified the application OAK 380/88 either in terms of the reliefs or in terms of the grounds advanced. There is no reference to the order dated 22.1.82 anywhere in the case file till it was decided on 27.11.89. It is not as if a new fact which could not be available to the applicant inspite of due diligence before the application was decided, on the basis of which a case for review of our order dated 27.11.89 is urged. These facts were known to the applicant at least on 17.2.89 when she represented but for reasons best known to her it was not urged before the Tribunal. She cannot, therefore, at this stage claim re-consideration of the judgement passed in OAK 380/88 on 27.11.89. Similarly, in the transferred petition

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TAK 533/87 also she took no action for modifying the reliefs or the grounds to take advantage of the order dated 22.1.82. When it is remembered that what she is seeking now is in relation to an event which took place more than 9 years ago, during which period she not only remained ignorant about the order dated 22.1.82 but repeatedly sought her preference to be posted as Deputy Office Superintendent in the lower scale and volunteered herself to be assessed for promotion as Inspector by way of her claim of regular selection of 1981, her laches in not modifying the pending applications and petitions No.s OAK 380/88 and TAK 533/87 cannot be condoned.

Law helps those who help themselves. The principle of 'vigilantibus et non dormientibus jura subveniunt', that is, law aid those who are vigilant and not those who sleep upon their rights, goes against the applicant. We have in our judgement dated 27.11.89 given her the most liberal accommodation in her reliefs by recognising her selection 27.3.81 as good for her promotion on 24.5.83 and converted the same from ad hoc to regular for purposes of seniority and this date cannot be pre-poned further. In the circumstances, we see no reason to re-consider the reliefs granted to the applicant which is considered by the respondents more than she had sought in OAK 380/88.

10. Further, in TAK 533/87 the following reliefs

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were sought:-

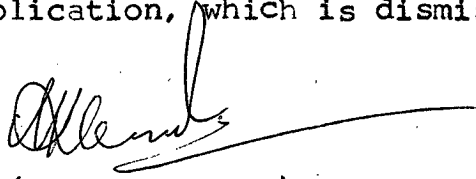
- " i) Call for the records relating to this case and quash Ext.P-16 and P-17 so far as they relate to the appointment/promotion of respondents 4 and 5 if and ~~not~~ to the extent such appointment/promotion affects the appointment, promotion or seniority, claim for regularisation as D.O.S. Level-II of the petitioner.
- ii) To issue a writ of Mandamus or other appropriate writ order or direction commanding the 1st respondent to regularise the petitioner as D.O.S. Level-II with effect from the date of occurrence of vacancy in that category.
- iii) To quash the reversion of the petitioner from the category of Deputy Office Superintendent Level-II by the issue of a writ of certiorari or other appropriate writ order or direction.
- iv) To direct the respondent No.1 to appoint the petitioner as Central Excise Inspector in the scale of pay of Rs. 425-800 in the event of her reversion from the post of Deputy Office Superintendent Level-II.
- v) Grant such other reliefs as may be prayed for and the Court deems fit to grant; and
- vi) Grant the cost of this Petition."

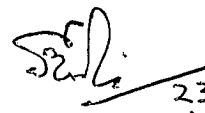
Of the 4 main reliefs, 3 reliefs pertain to promotion or reversion to or from the category of Deputy Office Superintendent. The fourth relief was for appointment of the petitioner as Central Excise Inspector in the event of her reversion from Deputy Office Superintendent. This clearly indicates that her prayer in that application was to continue her either as Deputy Office Superintendent or as Central Excise Inspector from the date of her reversion from the post of Deputy Office Superintendent which materialised on 23.8.85. This,

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in other words, meant that if she had not been reverted from the post of Deputy Office Superintendent, she should have been happy in continuing as Deputy Office Superintendent instead of Inspector, Central Excise. Accordingly, through the representation filed under the orders of the Tribunal dated 28.8.89 in the afore-said transferred writ petition, she could not have raised the question of her promotion as Inspector earlier than the date of her reversion from the post of Deputy Office Superintendent on 23.8.85. Since the claim of her promotion as Inspector of Central Excise has been duly and finally considered by the Tribunal in OAK 380/88, the respondents had rightly disposed of her representation by the impugned order dated 31.1.90 "subject to final implementation of the C.A.T's order dated 27.11.89 in OAK 380/88."

11. In the facts and circumstances, we are satisfied that the relief legitimately due to the applicant has been more than adequately covered by our judgement dated 27.11.89 in OAK 380/88 and there is no justification to take up the whole matter again through this application, which is dismissed, though without costs.


(A.V. Haridasan)
Judicial Member


23.8.90
(S.P. Mukerji)
Vice Chairman