

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

...

DATE OF DECISION 26.2.90

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN

AND

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION No.138/89

M. Sasidharan Applicant

Vs.

1. Collector of Central Excise
and Customs, Cochin.

2. Secretary, Central Board of
Excise & Customs, New Delhi.

3. Secretary, Ministry of Finance,
Central Secretariat,
New Delhi.

..... Respondents

Applicant in person.

Mr. Thomas John, ACGSC

.. Counsel for the
Respondents.

O R D E R

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

In this application dated 13.12.89 filed
under Section 19 of the Administrative Tribunals Act
in amendment of the earlier application dated 18.1.89,
the applicant who is an ex-serviceman and has been
working as an Inspector in the Central Excise under the
Collector of Central Excise and Customs at Cochin,
has prayed that his 9 years of military service should be
counted towards seniority and his date of appointment in

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the Department should be re-determined on the basis of priority appointment in accordance with the orders at Annexure-A.21. He has also prayed that those who had been responsible to deny him the legal and constitutional rights should be brought to book. The brief facts of the case are as follows:

2. The applicant was serving the Air Force as an Airman for a period of 9 years and released in February 1971 without any pension or gratuity. His name was sponsored in 1972 by the Employment Exchange for the post of Inspector of Central Excise. He was selected with 24th rank amongst the general candidates. His grievance is that like ^{the names of} Scheduled Castes and Scheduled Tribes his name should have been shown in a separate list of reserved category of ex-servicemen. Because of his low rank he could not get offer of appointment on the basis of the selection and he had to join the Accountant General's office as a temporary Auditor in May 1973 with the hope that his appointment in the Central Excise may materialise on a future date. He has been representing to the Collector of Central Excise and other officers for giving him the benefit of his selection for the post of Central Excise Inspector in the category of ex-servicemen and at long last ultimately vide order dated 20.10.75 (Annexure-A.8) he got an appointment as Inspector of Central Excise in the ordinary grade on a purely ad hoc and provisional

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basis. Having been selected in 1972 he had to join in 1975 from the minimum of the pay scale though he was given a notional seniority in the Cadre of Inspectors in accordance with his ranking in the merit list of 1972. After joining the department he started representing for upgradation of his seniority claiming that he should be senior to those Inspectors who were selected in 1972 along with him as he was entitled, as an ex-serviceman, to be appointed against a vacancy reserved for ex-serviceman from the date that vacancy arose. His representations and even Memorial to the President brought no results and his Memorial to the President was rejected on 29.3.84 (Annexure-A.15). His plea is that in the seniority list as on 1.1.86 he was shown as the senior-most ex-serviceman who was recruited as an ex-service candidate and therefore in accordance with the reservation orders at Annexures-A.28-A-29 and A-19 he should get seniority on the basis of the date of occurrence of the reserved vacancy. Since 10% of the vacancies are reserved for ex-servicemen, according to him, the 10th direct recruit vacancy which arose on 1.7.66 should be given to him and his seniority in the Cadre of Inspectors determined on the basis of that date. He has also argued that he should get all service benefits from the date the select list was

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published. The respondents have conceded that the applicant was an ex-serviceman and he obtained 24th rank in the merit list of the selection made in 1972. They have avered that even though he joined in 1975 he was given seniority according to his ranking in the select panel of 1972 and was placed above those Inspectors who joined in 1973 and 1974. They have argued that reservation of vacancies for ex-servicemen is only for appointment and not for confirmation or seniority. They have explained that the validity of the panel in which the applicant was included was extended from time to time and since the second ranking candidate was also an ex-serviceman he was appointed against the 10% reserved quota for ex-servicemen in 1973. When five more appointments were made in 1974 from the same select list the applicant could not be appointed as his rank was lower but later, by direction of the Ministry of Finance, he was accommodated in the second vacancy reserved for ex-servicemen on the basis of the 1972 panel and given seniority according to his ranking in the panel. They have also stated that the applicant had claimed seniority in another application before this Tribunal (O.A.K. 38/87) but the same was dismissed on 2.6.87 as time-barred. They have however conceded that in the order of the Tribunal he was given the


option to make a representation against the seniority list of 1986 with liberty to file appropriate application thereafter. The respondents have argued that by changing his seniority at this ^{late} stage the ^{settled} seniority of others will be disturbed. In the rejoinder the applicant has urged that in accordance with the orders at Annexure-A.30, he is entitled to count his previous 9 years of military service for seniority. He has also made a grievance of his belated appointment in 1975. He has also denied that the second ranking candidate was an ex-serviceman.

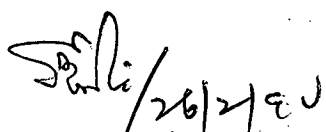
3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. The applicant having ranked as 24th in the select list cannot claim seniority over those who had been graded higher in the merit list, on the basis of occupying a reservation vacancy. Even if it is conceded that he is entitled to a reserved vacancy, he will be entitled to the benefit of appointment but not of seniority which will have to be determined on the basis of his rank in the merit list. The respondents have categorically stated that in the first instalment only 5 persons were appointed from the select list and therefore the applicant, on the basis of 10% vacancy, cannot claim a reserved vacancy as an ex-serviceman. In the second

instalment of 5 vacancies filled up in 1974, even though the appointments ^{could have been} ~~were~~ made upto the 9th or 10th rank in the merit list, the applicant was appointed as an ex-serviceman though his rank was 24th. He has been compensated for his belated appointment by adjusting him within the 1972 batch and placing him above those who were appointed in 1973 and 1974.

4. There is no rule which assigns seniority to an appointee on the basis of the date of occurrence of vacancy. The applicant's claim that he should be assigned seniority on the basis of the date of occurrence of reserved vacancy in 1966 cannot be countenanced because, till 1970, he was in the Air Force. The question of accounting his military service for seniority as Excise Inspector would have merited consideration if he had proved that the post occupied by him as a Combatant Airmen in the Air Force was in a grade equivalent to that of a Central Excise Inspector.

5. In the conspectus of facts and circumstances, we find that the applicant has failed to establish his claim and there is no merit in the application which is dismissed without costs.


26.2.90
(N. Dharmadan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.
T.A. No.

R.A.No.60/90

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OA. 138/89

DATE OF DECISION 10.7.1990

M. Sasidharan Applicant (s)

(Party, in person) Advocate for the Applicant (s)

Versus

Collector of Central Excise Respondent (s)

& Customs, Cochin and 2 others.

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P.Mukerji, Vice Chairman**

The Hon'ble Mr. **N.Dharmadan, Judicial Member**

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

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

We have heard the applicant and the learned counsel for the respondents on the Review Application and have gone through the documents. The review is being sought on the main ground that the submissions made by the applicant in his written arguments dated 22.1.90 have not been properly taken into account. It has also been contended that all legal aspects of the case have not been properly appreciated by the Tribunal. [^] The Review Application cannot be entertained. Firstly, if the applicant is aggrieved by the judicial content of our order dated 26.2.90 and feels that judicial mind has not been properly applied, he cannot move for review of the order but has to get the orders set aside in appeal. ^{Secondly,} A review is possible only

if there is an error apparent on the face of record or some new material is brought to the notice of the Court. We have gone through the written arguments allegedly filed by the applicant on 22.1.90 but we do not find any new material or any aspect of the case which would persuade us to think that there has been a miscarriage of justice in our order by not taking into account the written arguments.

2. After all is said and done, the fact remains that in 1972, 31 candidates including Scheduled Caste/Scheduled Tribes and 2 Ex-servicemen^{men} were selected. Of the 2 Ex-servicemen, one was ranked at No.2 and the other one is the applicant who was ranked at No.24. So far as the first Ex-serviceman is concerned, he was appointed in the first instalment but the applicant's ranking was so low that he could not be included even when the second instalment of 5 candidates were appointed in 1974. Because of the reservation for Ex-servicemen, the applicant was also appointed on the basis of ^{the} 1972 panel in preference to a number of ^{general} candidates on the panel who were ranking above him. Even if all the vacancies prior to 1972 had been carried over to 1972 and the number of posts reserved for Ex-servicemen had been increased beyond 2, the applicant could not have been given a better treatment than he got in respect of his ranking at the 24th position. He cannot in any case claim the vacancy given to the second ranking Ex-serviceman. Addition of more reserved posts for Ex-servicemen would not have improved his ranking. It is correct that the number of persons appointed from the Select List in the first instalment in 1972 was not 5 ^{was} as for the second instalment in 1974, but that should not make any difference at all because the applicant has been given the seniority on the basis of his rank as if all the vacancies had been filled in one instalment in 1972. In the reasons for review the applicant has argued that the statement made by the respondents that he was given seniority above the 1973 and 1974 appointees was false and that the Tribunal was misled by the false statement. This argument completely ^{fails} ~~is~~ because the applicant himself in the O.A. had stated "ofcourse in the subsequent yearly seniority list I was given notional seniority as per ranking in the Select List of 1972....."

3. We have already dealt with why the applicant cannot be given the seniority on the basis of date of occurrence of the vacancy. We stated in our judgement that if he was given seniority on that basis he would be assigned seniority of 1966 when he was in the Air Force. The Supreme Court also has been laying down consistently the dictum that seniority in a cadre is normally ^{to be} determined by the date of commencing of continuous service. The applicant has not produced any rule or order according to which seniority is pre-dated to the date of occurrence of vacancy when the incumbent may not have even ^{been} borne in the service. In the circumstances, we see no force in the Review Application and reject the same.



(N. Dharmadan)
Judicial Member

10.7.90.



(S.P. Mukerji)
Vice Chairman

10.7.90