

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THURSDAY THE THIRTY FIRST DAY OF AUGUST ONE THOUSAND
NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 150/89

C. P. Sreemathy

Applicant

Vs.

1. Union of India represented by the
Secretary to the Government,
Ministry of Finance, Department
of Revenue, New Delhi,
2. The Secretary, Central Board of
Excise & Customs, North Block
Central Secretariat, New Delhi,
3. The Collector of Customs and
Central Excise, Catholic Centre,
Cochin-31 and
4. Rahelamma George, Office Supdt,
Office of the Collector of
Customs and Central Excise,
Revenue Building, Cochin-18

Respondents

M/s. M. V. Bose, Mathew John &
T. K. Latif

Counsel for the
applicant

M/s. K. Ramakumar &
V. R. Ramachandran Nair

Counsel for R-4

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for
R-1 to 3

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

For the second time the petitioner is approaching
this Tribunal for redressing her grievances in connection
with her promotions ^{aspiring to} to the post of Office Supdt. and
Administrative Officer.

2. The petitioner entered as IDC on 3.8.64 in the service of the Central Excise Department. Later in 1969 she got an appointment as Stenotypist which was upgraded as Stenographer (OG) in 1969. From that post she was promoted as DOS Level II on 20.1.78. At that time, Stenographer (OG) and UDC were treated alike for promotion purposes. But the Recruitment Rules 1979 made some distinction in the matter of further promotion to the category of DOS Level II between those promoted from UDCs and Stenographers (OG). Under this Rule, the total service of a DOS Level II who has come from Stenographer (OG) are not at all counted in the matter of promotion to the higher though it is counted if the DOS Level II is promoted from UDC grade. So there is discrimination and a differential treatment given to those DOS Level II promoted from the post of Stenographer (OG) when compared with those promoted from the category of UDC.

3. Smt. P. C. Mariamma who is a similarly situated person like the petitioner, filed O.P. 4922 of 1981 before the High Court and obtained a decision on 28.2.1983 in her favour by the judgment at Annexure IV in which the 1979 Recruitment Rules were quashed. So the petitioner also filed O.P. 5461 of 1981 on 20.10.1981 with the following prayer:-

"1) to issue a writ of mandamus compelling respondents 1 to 3 to consider the service of petitioner in the cadre of stenographer (O.G.) for her promotion to the post of Deputy Office Supdt. Level I on the basis of seniority assigned in the Ext. P-1 list

- iii) to issue a writ of mandamus compelling respondents 1 to 3 to promote the petitioner forthwith with retrospective effect to the post of DOS Level I and to restore her seniority in this cadre above respondents 4 to 13 and to assign her, her legitimate rank and seniority in DOS Level I with all monetary benefits with a direction to pay all back arrears to her."

This O.P. was later transferred to this Tribunal and it was renumbered as TAK 549/87. It was ultimately allowed by Annexure-V judgment hereinafter referred to as the first judgment. There is the following directions in the first judgment:

"In the result, we declare that the applicant on completion of a total of 8 years service as Stenographer (OG) and DOS Level II has become eligible for promotion to DOS Level I, we direct the respondents 1 to 3 to consider the case of the applicant for promotion on the above basis by convening a review Departmental Promotion Committee within a period of two months from the date of receipt of a copy of this order. In case it is found that the applicant is eligible for promotion she will be granted consequential benefits and fixation of seniority in the cadre of DOS Level I above the respondents 4 to 13."

4. When the said judgment was sought to be implemented, five persons, including the present additional fourth respondent filed OAK 167/88, which was also later disposed of by Annexure-VII judgement, hereinafter referred to as the second judgment. The petitioner in this case was the fourth respondent in the ^{instant} case. The manner in which the first judgment was sought to be implemented (besides revising the seniority of the applicant ⁱⁿ as/Annexure-VI)

is stated in paragraph 2 of the second judgment as follows:

" In the reply filed on behalf of the respondents No. 1 to 3, it is stated that the applicants were promoted as per the recruitment rules, as they stood earlier and after striking down the rules relating to promotion to the post of DOS Level I reversions have become necessary as regards some junior officers in various grades including some of the applicants."

implementation

It is because of this manner of/ that the applicants in that application prayed for the following reliefs:-

- " i) To direct respondents 1 to 3 to continue the applicants in their present posts and not to revert them to any lower post;
- ii) To declare that the applicants are entitled to be promoted in preference to the 4th respondent in accordance with the rules in force on the date of promotion of the applicants."

5. In the second judgment referred to above, this Tribunal has explained the scope of the first judgment in the following manner:

" From the judgment (i.e. first judgment) it is clear that what was directed to be considered was only the eligibility of the present respondent-4 for promotion to the cadre of DOS Level I. In case she was found eligible for such promotion her seniority was directed to be fixed above the respondents Nos. 4 to 13 in that application. No direction for disturbance of the seniority of the present applicants was made there, and such a direction could not have been granted, or even intended as these applicants were not parties there." (paranthesis ours)

The Tribunal concluded the second judgment with the following observations.

" It follows that there is no scope for disturbing the applicants from the present posts they hold as a result of the final order in TAK 549/87.

The application is disposed of as above."

6. In the meantime, apparently in implementation of the directions in the first judgment, the petitioner was given an earlier date of appointment in the grade of DOS Level I as on 8.2.1980 and accorded seniority on that basis. She was also paid pay and allowance from the date of her deemed the promotion. In Annexure VI she has been given/second place and she is shown as /senior to four persons of whom V. P. Sarojini, xxx is one of the applicants in the second judgment and K. L. Joseph and P. N. Ganga Amma were respondents in the first judgment. Prior to this revision in the seniority list of Deputy Office Supdt. Level I as on 1.1.84 all these four persons as well as the present respondent 4 and many others were shown as senior to the applicant who was only placed at Sl. No. 21 (Annexure-III).

7. The petitioner, not being satisfied with this relief, submitted Annexure-IX representation stating that promotion to higher posts may also be granted to her considering her appointment as DOS Level I from 8.2.1980 and fix her seniority accordingly in further promotion posts as well. In answer to this representation, the Government passed Annexure-X order dated 30.1.89 by which they informed the petitioner that the direction given in the first judgment has been fully complied with as she has already been given seniority as DOS Level I from 8.2.1980, over

respondents 4 to 13 referred to in the judgment. It was added that the first judgment did not direct any further promotion to be given on the basis of the revised seniority as DOS Level I and the second judgment clarified that there was no scope for disturbing the applicants in that judgment from the present post, they held-i.e. Asst. Chief Accountant and Office Superintendents, when OAK-167/88 was filed-as a result of implementing the first judgment. It was therefore, stated that the Government was unable to give further promotion to the petitioner as claimed by her at that stage.

8. The contention of Shri M. V. Bose, the learned counsel for the petitioner is that though the petitioner was promoted to DOS Level-I giving date as 8.2.1980, she has not been granted all consequential benefits of further promotion over the respondents 4 to 13 as per the first judgment.

9. Shri K. Ramakumar, the learned counsel appearing for the respondent No. 4 forcefully submitted that the petitioner who filed the earlier O.P. 5461/81 which resulted in the first judgment had neither impleaded the present fourth respondent nor any of the other applicants in OAK-167/88. She has also not challenged the promotion of the fourth respondent on 30.5.82 as DOS Level-I, and further promotion as Office Supdt. on 26.6.1985. Similarly, others have also been promoted after selection before the first judgment but they were also not impleaded in that case by the petitioner. In any view of the matter, she cannot now obstruct or place any impediment in the prospects of the fourth respondent getting further promotion as Administrative xx xxxxxxxxx

Officer which is due to her very shortly. According to the learned counsel, the petitioner could have impleaded fourth respondent (as well as others similarly situated) in the case (i.e. O.P. 5461/81 (T.A.K. 549/87)) filed by her/or objected to the promotions of the fourth respondent at various stages. But having failed to do it, she cannot now seek a promotion as Office Superintendent from an anterior date in such a manner as would affect or disturb the promotion of the fourth respondent, especially when the fourth respondent obtained the second judgment in which this Tribunal has in unequivocal terms stated that she cannot be disturbed as a result of the implementation of the first judgment. That apart, he also submitted that the relevant promotion rules were rectified as early as in 1982 when the applicant could have got the same relief which she ultimately got by the first judgment dated 25.2.1988. By that date, many promotions had been made on the basis of selections and they remain unchallenged by the applicant in any proceedings. Thus, the failure, if any, of the petitioner to get the full effect of the implementation of the first judgment is, according to the learned counsel for the fourth respondent, solely attributable to the petitioner herself. She failed to place the matters specifically before the Tribunal and obtained proper directions or appropriate reliefs safeguarding her position while the second judgment was passed by the Tribunal.

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10. Sri K. Ramakumar's argument appears to be correct and
[of respondents 1 to 3 in OAK 549/87
we are inclined to accept the same except in regard to the claim.

His client is well within her right when she says that on account of the non-challenge of her promotion by the petitioner, the latter loses all rights against her. But so far as respondents 4 to 13 in TAK 549/87 are concerned, how can the right of the petitioner be lost, especially when in the first judgment, in which they were parties, there is an unequivocal declaration by the Tribunal that the petitioner is senior to them and there is a direction to fix her seniority over them. So far as they are concerned, the petitioner has a right to be considered for further promotions after fixation of the date of the petitioner in the category of DOS Level I as on 8.2.1980. It is to be remembered in this connection that the petitioner, who was the fourth respondent in OAK 167/87, a case filed by the fourth respondent in the instant case and four others, to resist the implementation of the first judgment at their cost, was fully aware of her rights under the first judgment. It is also true that she should have placed her grievances squarely and obtained appropriate directions for the strict implementation of earlier judgment so as to enable her get her promotions prior to respondents 4 to 13 in TAK-549/87 as claimed by her, notwithstanding the rights of the applicants in OAK 167/88 which includes the present fourth respondent. Having failed to do that at the appropriate time, the petitioner cannot now succeed in getting a place above the fourth respondent. The rights of the fourth

respondent are crystalised and settled after the second judgment which cannot be disturbed now on the basis of the date of promotion of the petitioner notionally given as per Annexure-VI. But we are of the view that the petitioner's right to be considered for further promotions over respondents 4 to 13 has ^{not} been lost to her completely after the second judgment.

11. We are faced with a delicate situation where the petitioner is declared senior to one group of persons but not senior to some others, who are juniors to the former group, because she did not implead the latter in the court proceedings initiated by her or she did not challenge their promotion. This action creates difficulty in implementing the first judgement. In our view, the administration too has to share the blame in an equal measure, if not a larger measure. Timely decision could have been taken on the following occasions which could have avoided the present situation:

- i) O.P. 5461/81 was filed by the petitioner in October, 1981. The counter affidavit was filed on behalf of the Govt. in September, 1982. It would appear that by that time the Recruitment Rules relating to promotion to the cadre of DOS Level I had already been amended, as pointed out in OAK 167/88 where the relevant amendment dated 27.2.82 was exhibited as Annexure-A. Therefore, if notice had been taken of this amendment when the counter affidavit was filed in 1982, the relief given to

the petitioner by the first judgment dated 25.2.88 could have been given as early as in 1982, avoiding all subsequent complications:

ii) It would also appear that the relevant provisions of the Recruitment Rules which was struck down by the first judgment in February, 1988 had earlier been struck down by the High Court of Kerala in February, 1983 in another OP 4922/81 filed by one Smt. P. C. Mariamma. In that case also it was held that if the petitioner was entitled to promotion after the High Court had declared the relevant rules as illegal and ultravires, she should be deemed to have been promoted from an earlier date and given consequential benefits in regard to seniority in the promotion post. In other words, she obtained more or less, the same relief which was given to the petitioner by the first judgment. The petitioner's case could also have been disposed of by the Govt. on the same lines as early as in 1983;

iii) They could have pointed out that all necessary parties have not been impleaded.

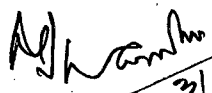
12. Taking into accounts all these facts, we are of the view that directions may have to be issued consistent with the first and second judgments for rendering justice to the petitioner without in any way affecting the rights of respondents-4 or others similarly situated like her.

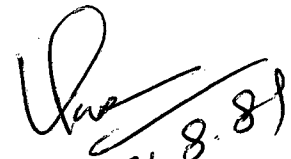
Accordingly, we issue the following directions:

- i) The petitioner is not only entitled to the promotion and seniority as DOS Level-I as per the first judgment-as shown in the seniority list at Annexure-VI, but also entitled to be considered for further promotion on the basis of the date assigned to her in Annexure-VI notwithstanding Annexure-X. So, we direct the respondents 1 to 3 to consider the claim of the petitioner for promotion as Office Supdt. on the basis of the seniority assigned to her in Annexure-VI seniority list in accordance with the rules then in force regulating such promotions.
- ii) While considering the seniority of the petitioner after giving her the promotion to the post of Office Supdt., the respondents 1 to 3 may also bear in mind the decision of this Tribunal in OAK 167/88. We make it clear that the petitioners in that case are not to be disturbed, while considering the claims of the petitioner in this case for further promotion from the grade of DOS Level-I.
- iii) In case the petitioner is found to be eligible for promotion to the post of Office Supdt. from a date earlier to the date on which she has now been promoted (i.e. 9.8.89), she may be given notional /if she cannot be given effective promotion from that date promotion w.e.f. that date/in the light of the decision in OAK-167/88. In that event, her pay as Office Supdt. from 9.8.89 (i.e. the date w.e.f. which she was actually promoted) should be fixed by assuming that she had been promoted as such from that earlier date.

13. Accordingly, we dispose of the original petition with the above directions.

14. There is no order as to costs.


(N. Dharmadan)
Judicial Member


(N. V. Krishnan)
Administrative Member

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Central Administrative Tribunal: Ernakulam Bench

Date of decision: 2-4-1990

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

RA NO.27/90 IN OA 150/89

1 Union of India rep. by the Secretary
to the Govt. of India, Ministry of
Finance, Deptt. of Revenue, New Delhi

2 The Secretary, Central Board of
Excise & Customs, North Block
Central Secretariat, New Delhi.

3 The Collector of Customs & Central
Excise, Cochin-18.

:Applicants/Respondents
in OA

1 CP Sreemathy.

Respondent/Applicant in OA

2 Rahelamma George

: Respondents/R-4 in OA.

Mr PVM Nambiar, Sr CGSC

:Counsel of applicants/
Respondents in OA

M/s MV Bose & Mathew John

: Counsel of Respondents/
Applicant-4 & Respondent
in OA.

O R D E R


Shri N Dharmadan, Judicial Member.

This review application has been filed by the
respondents in OA to review our order passed on 31.8.89
mainly on the ground that there is difficulty in implementing
the directions.

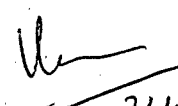
2 We have heard the arguments of the ^{learned} counsel on
both sides. We are of the view that it has been made
clear in paragraph 12, sub-para 1 & 3 of our judgment
dated 31st August, 1989 that the applicant in the OA can
only be given the benefit of promotion, which if cannot be
given in a regular manner, the respondents have the ^{freedom} freedom

to pass orders giving notional promotion fixing the pay and allowance w.e.f. the date of her actual promotion as stated in the judgment. We are satisfied that the applicants in this review petition have not made out any ground for reviewing our judgment.

3 In view of above, we see no merits in this review application and it is accordingly dismissed.


(N Dharmadan)
Judicial Member

2.4.90


(NV Krishnan)
Administrative Member

2-4-1990

CENTRAL ADMINISTRATIVE TRIBUNAL : ERNAKULAM BENCH

Date of decision: 20.10.89

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

RA No.47/89 IN DA NO.150/89

CP Sreemathy

: Applicant

Vs

1 Union of India rep. by the
Secretary to the Govt. of India
Ministry of Finance
Department of Revenue, New Delhi.

2 The Secretary, Central Board of
Excise & Customs, North Block,
Central Secretariat, New Delhi.

3 The Collector of Customs and
Central Excise, Catholic Centre,
Cochin-31.

4 Rahelamma George, Office Superintendent
Office of the Collector of Customs &
Central Excise, Revenue Building,
Cochin-18

: Respondents

Mr MV Bose

: Counsel of Applicant

Mr PVM Nambiar, SCGSC &

(for R 1 to 3)

Mr K Ramakumar

(for R-4)


O R D E R

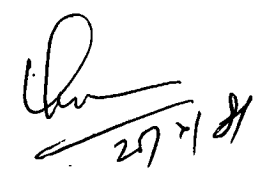
Shri N Dharmadan, Judicial Member.

The petitioner in this Review Petition prays
that the Tribunal may review the judgment passed on
31.8.89 and to direct the Respondents to promote the
applicant as Administrative Officer in accordance with
the seniority assigned to her in the Grade of Office
Superintendent with all back arrears of pay and allowances.

2 We have gone through the petition and heard the arguments of the learned counsel appearing for the petitioner as also the Respondents. The learned counsel has not made out any ground for reviewing the judgement already passed by us in this case. The attempt of the petitioner ^{is to} get further promotion on the basis of the observations contained in the judgment already pronounced ^{his} is a matter to be urged before the authorities concerned and not before this Tribunal.

3 On the facts and circumstances of the case we do not find any merit and the Review Application is dismissed.


(N Dharmadan)
Judicial Member
20.10.89


(NV Krishnan)
Administrative Member
20.10.89