

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.168 OF 2007

Friday this the 6th day of July, 2007

CORAM :

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

Raju George
Additional Commissioner of Central Excise
Office of the Commissioner of Central Excise
Central Revenue Buildings
I.S.Press Road, Cochin - 682 018 : **Applicant**

(By Advocate Mr. C.S.G.Nair)

Versus

1. Union of India represented by the Secretary
Department of Revenue
Ministry of Finance, North Block
New Delhi- 110 001
2. The Chairman
Central Board of Excise & Customs
North Block
New Delhi- 110 001 : **Respondents**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 06.07.2007, the Tribunal on the same day delivered the following :

ORDER

HON'BLE Mrs. SATHI NAIR, VICE CHAIRMAN

The applicant is working as an Additional Commissioner of Central Excise in the Office of the Commissioner of Central Excise, Cochin. He appeared for the Central Civil Services Examination conducted during 1970 and was appointed as an Appraiser of Customs. He joined service on 27.04.1972. He was promoted as Assistant Collector (now

redesignated as Assistant Commissioner) of Central Excise and Customs on ad-hoc basis on 10.07.1983. He was further promoted as Joint Commissioner on ad-hoc basis with effect from 25.09.2002. The applicant was granted Non Functional Selection Grade with effect from 01.01.2003. This post is designated as Additional;Commissioner.

2. The applicant seeks the following reliefs:-

- (i) To declare that the applicant is entitled for promotion as Commissioner of Central Excise and Customs with effect from the date his junior Smt. Meenakshi Passi was promoted.
- (ii) To direct the respondents to promote the applicant with effect from the date his junior Smt. Meenakshi Passi was promoted and grant all consequential benefits including monetary benefits.
- (iii) Grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper in the nature and circumstances of the case.

3. The case of the applicant is:- According to the 2004 seniority list of officers in the entry grade in the Central Excise and Customs Group 'A' Officers, (Annexure A-2) the applicant figures in the 1985 batch at Sl.No. 1170. The 2nd respondent had issued an order on 25.01.2006 promoting 34 officers of Central Excise as per Annexure A-3 No.9/06 dated 25.01.2006. In this order Sl.Nos. 22 to 34 figure in the said seniority list under 1986 batch are junior to him. Therefore, he should find a place below Sl.No. 21 in that list. Immediately Annexures A-6 to

A-8 representations have been given by the applicant. In fact he had also represented earlier stating that he had put in more than 22 years service and he is about to retire. Unfortunately, these representations have not been considered.

4. When the matter came up today, the learned counsel for applicant submitted that the applicant is due to retire on 31.12.2007 and according to DOPT O.M.No.22011/11/89-Estt(D) dated 25.01.1990, no officer can be promoted in the last three months before retirement. Therefore, any further delay in granting promotion to the applicant would result in a permanent deprivation of promotion.

5. The respondents have filed a very bald reply statement and the only submission made in Para 4 of the reply is that the Board of Central Excise and Customs have intimated that the promotion could not be granted to the applicant since an upward revision of the seniority is under active consideration of the UPSC in a Review Departmental Promotion Committee.

6. Significantly, an upward revision of seniority would imply that the applicant will be eligible for promotion much earlier. Any postponement of his promotion for review of the seniority list would only serve to delay and also deny him promotion for ever in terms of the instructions of the DOPT quoted above and the applicant end up as an additional entrant

in the chart of individuals given in Annexure A-4, who could not be promoted as they retired prior to the issue of the promotion order.

7.. We cannot therefore subscribe to the stand taken by the respondents that promotion of the applicant should wait for revision of his seniority. It would have been understandable if the revision was to be downward, but it is patently stated to be an upward revision and the applicant is likely to gain seniority. The stand of the respondents is illogical and discriminatory.

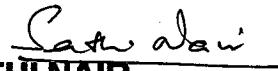
8.. We therefore, direct the respondents to consider the promotion of the applicant with effect from the date his junior Smt. Meenakshi Passi of the 1986 batch was promoted and grant him all consequential benefits within a period of two months from the date of issue of this order. It is also made clear that this order will not be a bar for the upward revision of his seniority which is under consideration.

10. With the above directions, O.A is disposed of. No costs.

Dated, the 6th July, 2007.



K.B.S.RAJAN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

vs