

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.176/2005

WEDNESDAY THIS THE 22ND JUNE 2005

C O R A M

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

T.K.Thomas, S/o late K.J.Thomas, Inspector of Central
Excise, O/o the Assistant Commissioner, Customs
Preventive Division, Kozhikode, R/o Ambadi Paiace
Kumminiparampa P.O, Karippur, Malappuram.

Applicant

(By Advocate Mr.Shafik M.A)

Vs.

1. Union of India represented by the Chairman
Central Board of Excise & Customs, North Block,
New Delhi.

2. The Chief Commissioner of Customs & Central Excise
Kerala Zone, Central Revenue Building, I.S.Press
Road, Cochin-682018.

3. The Commissioner of Customs & Central Excise
Cochin Commissionerate, IS Press Road, Cochin.

Respondents

(By Advocate Mrs.K.Girija, ACGSC)

The application having been heard on 22.6.2005 and on the
same day the Tribunal delivered the following:

O R D E R

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

The applicant is working as Inspector, Central Excise and
according to him his name figured at Sl.No.26 in the seniority list of
Executive Officers issued on 20.11.2003 and his next promotion is that
of Superintendent of Central Excise. While so he was considered by the
DPC held in 2003 and promoted as per Annx.A2 dated 9.12.2003.
However due to personal and family difficulties the applicant could not
accept the promotion and declined to join in the post of Superintendent
and continued to work on the post of Inspector. According to the
instruction the period of ban due to declining of promotion is one year
which would get over by December 2004. The applicant further stated
that in the meantime the respondents conducted one more DPC in the

month of June 2004 for the vacancies which had arisen and likely to arise between April 2004 and March 2005 and 4 juniors to the applicant were promoted as Superintendent by Anxx.A3 order dated 30.6.2004. The grievance of the applicant is that even the period of ban of one year due to declining the promotion granted earlier, is over by December 2004, still the applicant has not been promoted till date. He has, therefore, prayed for the following relief

"To call for the record relating to Annxs.A1 to A4 and to declare that the applicant is entitled for promotion to the post of Superintendent of Central Excise with effect from the date on which he has completed the one year ban period for declining promotion as per Anxx.A1.

To direct the respondents to at least give effect to the recommendations of the DPC conducted in June 2004 and to issue orders promoting the applicant as Superintendent of Central Excise with effect from the date on which he has completed the period of one year ban."

2. The respondents have filed reply statement wherein the facts of the case has not been disputed. On 18.6.2004 the Ministry of Finance had granted, as a one time measure, one year relaxation in qualifying service as prescribed in the recruitment rules consequent to which the review DPC had to be held for vacancies created due to cadre restructuring. In O.A No.530/2005 filed by Netticadan Antonio & Others challenging the relaxation in qualifying service this Tribunal passed interim order on 20.7.04 directing that the respondents may proceed with holding of the DPC, however the appointment thereto shall not be made without the leave of the court. The respondents have therefore submitted that though the DPCs held from July 2002 to June 2004 were reviewed, only the fresh panel prepared in the review DPC can be operated and the operation of the said panel is subject to the stay granted by this Tribunal as mentioned above. Therefore, even though the applicant was empanelled by the DPC held on 17.6.04 the formal promotion orders to the applicant could not be issued.

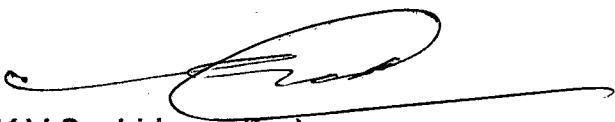
3. We have heard the learned counsel. We have also called for

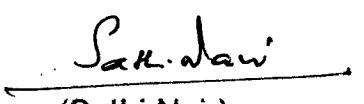
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the records of the DPC proceedings in order to verify the factual position and also to ascertain whether there would ^{be} any conflict of interest as a result of the relaxation of qualifying service and change in the zone of consideration of the select panels. The counsel for the respondents on instruction stated that there is no such conflict of interest. From the records it is observed that the DPC which reviewed the proceedings of meeting held on 17.6.2004 took place on 20.7.04. The name of the applicant finds place at Sl.No.1 of the panel for promotion in the grade of Superintendent in the Central Excise approved by the DPC. It has been noted that under the remarks column that the applicant is eligible to be promoted on 13.12.04. In the circumstances, it is clear that there is no bar on the applicant's promotion except the stay orders granted by this Tribunal in MA No.510/04 in OA No.530/04 dated 20.7.04. We, therefore, issue the following directions:

- i) The respondents are directed to give effect to the recommendations of the DPC conducted on 29.9.04 and issue orders forthwith promoting the applicant as Superintendent Central Excise with effect from the date recommended by the DPC;
- ii) The interim order of MA No.510/04 in OA No.530/04 is modified in respect of the applicant to the extent that it will not stand in the way of the applicant's promotion as Superintendent of Central Excise.

No order as to costs.


(K.V. Sachidanandan)
Judicial Member


(Sathi Nair)
Vice Chairman