

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 272 of 1996.

Wednesday this the 29th October, 1997.

CORAM:

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

N. Surendran Nair, Inspector of
Central Excise, Range-III,
Thiruvananthapuram. .. Applicant

(By Advocate Shri Vellayani Sundararaju)

Vs.

1. Union of India, represented by
Secretary to Government,
Ministry of Finance, Department
of Revenue, New Delhi.
2. The Central Board of Excise and
Customs, represented by its
Chairman, New Delhi.
3. The Commissioner of Central
Excise and Customs, Central
Revenue Building, Cochin.
4. The Assistant Collector of Central
Excise, Thiruvananthapuram
Division.
5. E.J. Thomas, Inspector of Central
Excise, Central Revenue Building,
Cochin.
6. P. Haridasan, Inspector of Central
Excise, Central Revenue Building,
Cochin.
7. K.V. Dasan, Inspector of Central
Excise, Central Revenue Building,
Cochin. .. Respondents

(By Advocate Shri S. Radhakrishnan, ACGSC (For R.1-4)

The application having been heard on 29th October, 1997
the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who is working as the Inspector of Central Excise was considered for the vacancies of the year 1988-89 by Departmental Promotion Committee(DPC for short) held on 27.5.91 to 29.5.91. He did not appear for the selection, since at that time there were certain adverse entries in his Annual Confidential Reports against which he had represented but no orders had been passed on his representation. Thereafter, by A-5 orders dated 30.1.92 the appeal preferred against the applicant's adverse entries was favourably disposed of. Applicant was considered for promotion as Inspector of Central Excise by DPC which met for consideration of vacancies of 1989-90 and subsequent years and he was also promoted. The grievance of the applicant is that since the adverse entries in the ACRs stood expunged he is entitled to be considered for the vacancies of 1988-89 by a review DPC and that he is entitled to be promoted on 1.3.89 like the respondents 6 and 7 who are his juniors as seen from A-7. At the time of hearing, applicant stated that he is not pressing his prayer for promotion with effect from 22-12-84 based on the promotion of the 5th respondent.

2. Respondents submit that the Tribunal in O.A.916/93 directed the department to review the selections of Inspectors

made for the years 1989-90, 1990-91 and 1991-92 following the instructions issued in A-9 and that the review was done by Departmental Promotion Committee on 20/21.11.95 and applicant was selected in accordance with the instructions in A-9. They also submit that in cases where the adverse remarks were ~~toned~~ down or expunged subsequent to the consideration by the DPC the case should be scrutinised by the appointing authority to decide whether or not the review of the DPC is justified taking into account the nature of the adverse remarks ~~toned~~ down or expunged. Since the applicant does not loses his opportunity as Inspector but was not selected on merit, a decision was taken by the appointing authority that there was no need to review of the DPC held earlier.

3. We are not persuaded to agree with this contention. It may be that the applicant was not selected by the DPC on merit but the adverse entries in his ACR were in force at that time and ~~xxxe~~ they formed part of the material on which the DPC has to decide on the merit of the applicant. Once the adverse entries have been expunged or ~~toned~~ down the case of the applicant has necessarily bec reviewed to consider whether he is still unfit on the basis of merit despite the adverse entries in his ACR being expunged.

4. We, accordingly, consider that the prayer of the applicant is well founded. The applicant is entitled to have his case for promotion against the vacancies of the year 1988-89 to be considered by a review DPC to be held

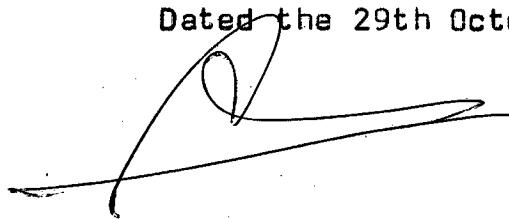
after 30.1.92 and the review DPC will have to consider the fitness of the applicant for promotion in the light of the ACR as ~~xxx~~ amended in the light of A-5 orders dated 30.1.92.

5. We, accordingly, direct 3rd respondent to hold a Review DPC for the year 1988-89 and consider the case of the applicant for promotion as Inspector at Central Excise with reference to the vacancy for 1988-89 with effect from

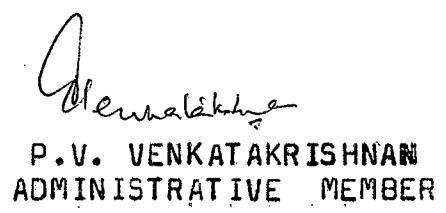
/the date on which his juniors respondents 6 and 7 were promoted. The 3rd respondent shall arrange to hold a Review DPC within three months.

6. The application is allowed as aforesaid. No costs.

Dated the 29th October, 1997.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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