

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 345/2001

Monday...this the 23rd day of June, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. C.K.Thankappan,
Superintendent of Customs(Preventive)
Customs House, Kochi.9.
2. W.Samuel Varghese,
Superintendent of Customs (Preventive)
Customs House, Kochi.9.Applicants

(By Advocate Mr. Vellayani Sunderaraju)

v.

1. Union of India, represented by the
Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Central Board of Excise and Customs
represented by its Secretary,
New Delhi.
3. The Commissioner of Customs,
Customs House, Kochi.9.
4. P.K.Alias, Superintendent of Customs
(Preventive), Customs House, Kochi.
5. C.P.Sasikumar,
Superintendent of Customs (Preventive)
Customs House, Kochi.9.Respondents

(By Advocate Mr.C.Rajendran, SCGSC (for R.1to3)
Mr.S.Chandrasenan for R.4&5

The application having been heard on 18.6.2003, the Tribunal
on 23.6.2003 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicants who are working as Superintendents of
Customs (Preventive) Customs House, Kochi have filed this

(M)

application challenging the Establishment Circular No.12/2000 (A1) and corrigendum issued on 4.4.2000 (A1(a) to the extend of the seniority assigned to Respondents 4&5 and the deemed date of officiation shown as 27.3.91 as Superintendent of Customs.

2. The facts necessary to understand the dispute involved in this case are stated as follows. The applicants 1&2 were directly recruited as Preventive Officers in the Customs House, Cochin on 19.9.75. The 4th and 5th respondents were appointed as Preventive Officers on 15.7.72 and 22.7.72 respectively in Goa and Vizag Customs House but joined the Customs House on inter-commissionerate transfers on 13.6.75 and 3.10.75 respectively. Although in the Circular dated 12.2.1958 (A3) the staff transferred within three years of first appointment could be transferred without loss of seniority the respondents 4&5 were not given the benefit of the Circular and they joined as the juniormost at the Cochin Customs House. In the Seniority List of Preventive Officers as on 1.1.86 (A2) the applicants 1&2 were at Sl.No.66 and 67 respectively while Respondents 4&5 were at Sl.No.64 and 69. The applicants and six others were promoted to the post of Superintendents vide order No.42/1991 dated 27.3.1991 with effect from that date. One of the persons who promoted did not join duty, others joined. While matters stood so, some of the inter-commissionerate transferees belonging to the Group C non-gazetted posts approached the Patna Bench of the Tribunal for the benefit of seniority in terms of Clauses

✓

1&2 of A.3. The Tribunal allowed their claim. The Judgment of the Tribunal was upheld by the Hon'ble Supreme Court of India by judgment dated 31.3.1998 in SLP No.6734 of 1996. Pursuant to the above judgments, the second respondent took a decision suo motu to grant the benefit of clauses 1&2 of Annexure.A3. to all Group C officers who were given inter-commissionerate transfer before 20.5.1998 (A5). In purported implementation of the instructions contained in Annexure.A.5 order the third respondent revised the seniority of five Superintendents of Customs including Respondents 4&5 but omitting the case of Shri M.K.Babu who was also an inter-commissionerate transferee. If the seniority of Shri M.K.Babu which was also required to be revised was revised, according to the applicants the respondents 4&5 would not have been eligible for promotion as Superintendents with effect from 27.3.1991 and to that extend the seniority has not been properly revised. Projecting this grievance, the applicants submitted Annexures.A7 and A8 representations dated 17.4.2000 but they did not receive any response. Therefore, the applicants have sought the following reliefs in this application.

(i) To quash Annexure.A1 and A1(a).

(ii) To direct the 3rd respondent to refix the seniority of the applicants over the seniority of respondents 4&5 as Superintendent of Customs Preventive in the Customs House, Cochin.

(iii) To declare that the third respondent was not directed by the Ministry through Annexure.A5 to refix the intercommissionerate transferees seniority in a Class B category and hence declare that the review D.P.C. said to have held for granting undue promotion to respondents 4&5 from 27.3.1991 is against all service jurisprudence and against the number of vacancies available in the Class B category on 27.3.1991.

0

(iv) To issue any other order or direction this Hon'ble Tribunal may deem fit on the facts and in the circumstances of the case.

(v) to allow costs to these proceedings

3. The official respondents in their reply statement seek to justify the revision of seniority because of the conscious decision contained in Annexure.A.5. They contend that on revision of seniority in the cadre of Preventive Officers, the seniority of the officers in the higher grade was required to be revised and hence the respondents 4&5 were deemed to have been promoted as Superintendents with effect from 27.3.1991, the date on which they became eligible for promotion on the basis of the revised seniority after holding a review D.P.C. It is admitted by the official respondents that the case of Shri M.K.Babu was not brought to the notice of the official respondents by anybody including the applicants and M.K.Babu having been retired long before, there was an inadvertant omission in considering his case. However, M.K.Babu never made a grievance about it and the applicants have not in the application stated as to how their seniority has been adversely affected, contend the respondents. The official respondents contend that the applicants do not have any legitimate grievance and that the application is liable to be dismissed.

4. The respondents 4&5 also filed a detailed reply statement justifying the grant of seniority to them in terms of Annexure.A3 as also Annexure. A1 and A1(a) giving them deemed date of promotion as Superintendent of Customs with effect from 27.3.1991.

M

5. We have carefully gone through the entire pleadings and all the materials placed on record and have heard at length the arguments of Shri Vellayani Sunderaraju, learned counsel of the applicants, Shri C.Rajendran, SCGSC appearing for Respondents 1 to 3 and Shri S.Chandrasenan for Respondents 4 and 5. Shri Sundararaju argued that the benefit of reckoning service upto three years prior to inter-commissionerate transfer in terms of Annexure A3 and A5 being available only to Group C cadre, the respondents had gone wrong in revising the seniority of Superintendents which is Group B. We find absolutely no force in this argument. Seniority has a direct nexus with the right to be considered to next higher grade. By revision of seniority as Preventive Officers those who gain in seniority have a right to be considered for promotion to the next higher grade with effect from the due date. That is the reason why the respondents 4&5 were considered for promotion to next higher grade of Superintendents with effect from the due date. The only grievance of the applicants is that while revising the seniority of intercommissionerate transferees, the official respondents omitted to consider the case of Shri M.K.Babu which according to the applicants was deliberate, with a view to give undue advantage to the respondents 4&5. From the facts and circumstances of the case and in the absence of any allegation of malafides, we are prepared to accept the explanation contained in the reply statement of

✓

respondents that the case of Shri M.K.Babu was not considered for the reason that Babu had long back retired from service and his case did not come to their notice.

6. The applicants in their pleadings have not made it explicit as to how the non-consideration of Shri M.K.Babu for promotion as Superintendent with effect from 27.3.91 has adversely affected the applicant's seniority. If Babu was entitled to be considered for promotion ~~earlier~~ from a date ~~xxx~~, he was actually promoted, it was upto him to put forth that grievance and seek relief. It is not clear or evident as to whether Babu would have been promoted or not promoted with effect from 27.3.1991 as his case obviously had not been considered. Even if Babu's claim was taken up and he had to be promoted the official respondents would have devised ways and means to give him due benefit without disturbing those in position. Since no challenge was made against non-consideration of M.K.Babu for promotion by him we are of the considered view that the applicants are not entitled to find fault with Annexure.A1 and A1(a) orders. An application under section 19 can be filed only by a person aggrieved. Since there is no case that the applicants were not considered for promotion at the appropriate time or that on account of promotion granted to respondents 4&5 the applicants have been reverted or subjected to any detriment or as to how the applicants' rights have been adversely affected, we do not find any reason to interfere with the impugned orders.

✓

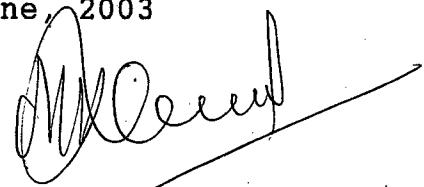
7. In the light of what is stated above, we find no merit in this application and therefore, we dismiss the same leaving the parties to bear their own costs.

Dated this the 23rd day of June, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(S)



A.V. HARIDASAN
VICE CHAIRMAN