

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.36/2003.

Thursday this the 18th day of September 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.Unnikrishnan,
Inspector of Central Excise,
Central Excise, Tirur Range,
Tirur, Malappuram Dt. Applicant

(By Advocate Shri.Jacob Chacko)

vs.

1. Union of India, represented by
Secretary, Department of Revenue,
Ministry of Finance New Delhi.
2. The Commissioner of Central Excise and Customs,
Central Revenue Building,
I.S.Press Road, Kochi-18.
3. The Administrative Officer,
Central Excise Division,
Kozhikode.

Respondents

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 18th September 2003, the Tribunal on the same day delivered the following:

• O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The only question that has to be considered in this O.A. in effect is, whether the applicant could be held entitled to ante-dated promotion to the post of Inspector of Central Excise against the vacancy arising in 1992-93, as per the rules and instructions governing promotion to the post of Inspector of Central Excise Department. The applicant's representation dated 11.4.2002 requesting for retrospective promotion as Inspector of Central Excise in 1991-92 has been rejected by the 2nd respondent by A-1 order dated 18.7.02. Being aggrieved, the applicant has prayed for the following main reliefs:-

- i. to quash Annexure A-1 and declare that the same is illegal and arbitrary;
- ii. direct the respondents to give the applicant promotion deeming his name to have been included in the promotion list prepared on the basis of the interview held for filling up of vacancies for the years 1992-93 on the basis of the interview held to fill up vacancies for the year 1992.
- iii. since he is holding the post of Inspector from January 1996 the promotion benefits including seniority and other benefits may be ordered to be given with effect from the date on which he would have got if his name had been included in the list for 1992-93,

2. The brief facts are as under:

The applicant who was a Tax Assistant in the Central Excise Department attended the interview for filling up the vacancies of the post of Inspector of Central Excise for the year 1989-90 and 1990-91 on 21.9.92 and 28.9.92 respectively, but without success. Though an interview was slated to be held on 12.10.92 for filling up the vacancies which arose in 1991-92, the applicant was not given a chance apparently on the ground that he was above the age of 38 and that those between the age of 38-45 could avail only two additional chances. It would appear that the respondents were of the view that since the applicant having been considered for the vacancies of 1989-90 and 90-91, he had already availed the said two chances and that therefore, he could not be called for interview on the third occasion. The applicant questioned the rule position by filing an O.A.1627/92 wherein, this Tribunal issued interim orders permitting the applicant to appear for the interview to be held next i.e.on 29.3.93. Accordingly, he was provisionally allowed to take part in the interview. He was found to be successful. Meanwhile in another O.A. filed by a certain individual --a fact which is admitted by the counsel on both sides--this Tribunal quashed the proceedings of the Departmental Promotion Committees (DPCs for short) held

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for the years 1989-90, 90-91 and 91-92 and directed the respondents to hold fresh DPCs for those years. The candidates were accordingly given option as to which year they would like to be considered for promotion on the basis of their available chance or chances. The applicant in this case opted to be considered against vacancies for 1991-92. In the Review DPC also the applicant did not find success in respect of promotion to the post of Inspector of Central Excise against vacancies of 1991-92. Meanwhile, O.A.1627/92 filed by the applicant was dismissed and the rules and instructions in force were upheld. The applicant was not considered for the years 1992-93 or thereafter till 1994-95. The applicant's case is that he was found successful in the interview in which he was allowed to take part, provisionally, in the light of the interim order of this Tribunal in O.A.1627/92 and that in view of the 1989-90, 1990-91 and 1991-92 DPC proceedings held earlier having been quashed, the applicant could not have availed any additional chance pertaining to those years as per the original DPC. The applicant's present grievance turns on the following grounds:

- (i) Out of the two additional chances available to the candidates in the age group of 38-45 the applicant availed only one chance i.e. for 91-92 as per the review DPC held on 20.11.95.
- (ii) Since the applicant had already found fit as per the provisionally held interview for the year 1992-93, that ought to be considered as his legitimately available second chance and his pay and allowances and seniority should be fixed with reference to the promotion against vacancies for 1992-93 in spite of the subsequent dismissal of the O.A.1627/02.

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Thus, the right place for the applicant according to him is in the list prepared for 1992-93 on the basis of the interview held on 29/3/1993 and the vacancy to be assigned to him should be a vacancy that arose earlier to that interview.

3. The respondents have filed a reply statement stating that the applicant was "not considered" eligible for promotion to the post of Inspector of Central Excise against a vacancy for 1991-92 due to the review DPC for the years 1989-90, 90-91 and 91-92. The applicant was considered to have availed only one of the two additional chances and he was given the second chance in the year 1994-95 and accordingly, he was promoted as Inspector in the Central Excise Department in the DPC held for filling the vacancies of 1994-95. It is also stated by the respondents that the applicant had provisionally been considered for selection for the vacancies of 1992-93 as per the interim order of this Tribunal dated 26.3.93 in O.A.1627/92, subject to the final outcome of that O.A. Since the said O.A. was dismissed on merits rejecting all the arguments put forward by the learned counsel for the applicant, the findings of the DPC in respect of the applicant with regard to the vacancies of 1992-93 for which he was provisionally considered as per the interim order of this Tribunal has become infructuous, according to the respondents.

4. We have heard Shri Jacob Chacko, learned counsel appearing for the applicant and Shri C.Rajendran, learned SCGSC appearing for the respondents. Learned counsel for the applicant has vehemently argued that, "out of the two additional chances available for the candidates aspiring to be promoted to the post of Inspector of Central Excise falling within the age group of

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38-45, the applicant even as per the respondents' own statement, availed the first chance for 1991-92 as per the specific option exercised by him before the review DPCs were held. Naturally, therefore the applicant ought to have been considered for 92-93 vacancies, although he had appeared for the interview provisionally at an earlier date, i.e. 29.3.93 in the light of the interim order of this Tribunal in O.A.1627/92. According to the learned counsel for applicant, the mere fact that the said O.A. was subsequently dismissed would not change the position of the eligibility of the applicant, since, in any case, he was found fit in the said provisionally held interview and since he was eventually considered fit even in 1994-95. The limited argument put forward by the applicant's counsel is that, the promotion of the applicant to the post of Inspector of Central Excise Department should be considered to have taken place with reference to the interview held on 29.3.93 for the year 1992-93.

5. Shri C.Rajendran, learned SCGSC, on the other hand would try to rebut the arguments of the learned counsel for the applicant by stating that, the interim order given by the Tribunal in O.A.1627/92 would be infructuous in view of the fact that, the said O.A. was eventually dismissed. The applicant could, no doubt, be stated to have availed his first additional chance for the year 1991-92 as per his own option. However, because of a series of intervening events he could be considered against the vacancies of 1994-95, as a legitimate interview could be held for that year and he was selected in that interview, learned counsel would maintain. He would, therefore, vehemently contend that the applicant's claim for ante-dating promotion or grant of deemed promotion with respect to 1992-93 vacancy cannot be accepted.

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6. On a consideration of the facts on record and the contentions put forward by the rival counsel, we are of the considered view that the applicant has a case to be considered for promotion to the post of Inspector of Central Excise against a vacancy for 1992-93, as that would be the second additional chance available to him after the first chance availed in respect of 1991-92. It is an admitted fact that the original DPCs in 1989-90, 90-91 and 91-92 were quashed and fresh DPCs were held. As per option allowed to be exercised before holding the fresh DPCs the applicant availed of his chance for 91-92 vacancy, but he was not lucky to be selected. In the DPC held on 29/3/93 for 1992-93 the applicant was provisionally permitted to take part in the interview in the light of this Tribunal's interim order dated 26.3.93 in O.A.1627/92 and he was found successful. The respondents' contention is that as O.A.1627/92 was finally dismissed by this Tribunal's order dated 6.9.94, the applicant could not be considered to have participated in the interview provisionally held on 29.3.93. Therefore, according to the respondents the applicant was allowed the second additional chance for consideration for promotion only against a vacancy of 94-95. We are of the view that the dismissal of the O.A.1627/92 was on the assumption that valid DPCs had been held in respect of the vacancies of 1989-90, 90-91 and 91-92 in September 1992 itself. But it has to be appreciated that when admittedly the applicant could be said to have availed the first of the two additional chances only in respect of the fresh DPC for 1991-92, the applicant's right for the second chance would get revived. Second chance should have been for 1992-93 in the normal course. In our opinion that chance cannot be said to have been lost because of the dismissal of the O.A.1627/92.

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7. In this connection, it is pertinent to observe that by the respondents' own admission as per the reply statement, the applicant was considered to have availed himself of only one chance i.e. in the fresh DPC for 91-92 and that he was given his second chance in the DPC for the year 94-95, which was the next DPC held after the said review DPCs. In our considered view, the respondents should have in all fairness examined the facts and the genuineness of the case and reviewed the matter for considering the applicant for promotion against a vacancy for 1992-93 having regard to the favourable result in the provisional interview held on 29.3.93.

8. On the facts and in the circumstances, we hold that the applicant, having become eligible for promotion on the basis of the provisional interview that was held on 29.3.93 for filling up the vacancies for 1992-93, should be deemed to have been promoted against a vacancy for 1992-93 and that accordingly, he should be entitled to all consequential service benefits including seniority. However, we make it clear that, in view of the fact that the applicant was in fact promoted at a later point of time against a vacancy of 94-95, no back wages need to be paid to him though he would be eligible for notional promotion and seniority on the basis of the DPC held for 92-93 on 29.3.2003.

9. Accordingly, we set aside the impugned A-1 order dated 18.7.2002 and direct the 2nd respondent to issue appropriate consequential orders placing the applicant's seniority according to rules along with those who were promoted to the post of

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of
Inspector/Central Excise against vacancies for 92-93 on the basis
of the DPC held on 29.3.93 notionally. Such consequential orders
shall be issued within a period of three months from the date of
receipt of a copy of this order.

10. The O.A. is disposed of accordingly. No order as to
costs.

Dated the 18th September, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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