

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.378/10

Tuesday this the 22nd day of June 2010

**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

I.S.Antony Cleetus,
S/o.Sandhyavu,
Tax Assistant,
Office of the Deputy Commissioner of Central Excise,
Central Excise Bhavan, Cochin – 17.Applicant

(By Advocate Mr.Babu Cherukara)

V e r s u s

1. Union of India represented by the Secretary,
Central Board of Excise & Customs,
Department of Revenue, Ministry of Finance,
New Delhi.
2. The Chief Commissioner,
Central Excise, Customs & Service Tax,
Central Revenue Building, IS Press Road,
Cochin – 18.
3. The Joint Commissioner of Central Excise (P&V),
Central Revenue Building, IS Press Road,
Cochin – 18.Respondents

(By Advocate Mr.S.Jamal,ACGSC)

This application having been heard on 22nd June 2010 this Tribunal
on the same day delivered the following :-

O R D E R

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The short question involved in this Original Application is with regard
to the non-consideration of the representation of the applicant by the
respondents. The bare facts of the case are that while the applicant was
working as Tax Assistant, a criminal case was charge sheeted against him



as CC No.779/02 before the Judicial First Class Magistrate Court-I, Kochi. In the charge sheet it was alleged that he has caused grievous hurt to the victim in the above case. However, the trial court after the trial found the applicant guilty. He was convicted and sentenced to suffer simple imprisonment for various terms under Sections 323, 448, 427 and 506(1) read with Section 34 IPC along with other co-accused. The trial court has also ordered to pay a fine of Rs.2500/- Against the conviction of sentence ordered by the trial court, the applicant filed an appeal before the Additional Sessions Judge (Ad hoc-I), Ernakulam as Criminal Appeal No.1093/04. On hearing the appeal the learned Sessions Judge though found the applicant guilty under Sections 323, 448 and 427 read with Section 34 IPC sentenced to pay him a fine of Rs.1000/- and he was admonished under Sections 3 and 5 of the Probation of Offenders Act. The conviction under Section 506(1) of IPC has been set aside. Thereafter, the applicant filed the Annexure A-7 representation dated 11.3.2010 for not giving him promotion to the next cadre along with his juniors. Since the said representation has not been considered by the respondents, the present Original Application has been filed praying as follows :-

1. Order directing the respondents to promote the petitioner being a Deputy Office Superintendent in Central Excise and Customs Department with retrospective effect from the date of promotion of immediate junior ie. from 1.8.2009 onwards.
2. Order directing the respondents to provide all service benefits of Senior Tax Assistant from the date of promotion of his immediate junior till the date of promotion of that junior as a Deputy Office Superintendent.
3. Any other orders as this Court deems fit and proper in the facts and circumstances in the case and also those are prayed for during the pendency of the O.A.

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.3.

2. When the Original Application came up for admission this Tribunal ordered notice to the respondents and one Shri.S.Jamal has taken notice for the respondents also. This Tribunal had also directed the respondents to file reply statement, if any, in the matter. However, till this time no reply is seen to have been filed by the respondents. In the facts and circumstances of the case, we feel that the reply statement is not necessary to grant the reliefs claimed by the applicant, namely, for the disposal of Annexure A-7 representation by the Department.

3. We have heard Shri.Babu Cherukara counsel appearing for the applicant and also Shri.R.Sreeraj on behalf of Shri.S.Jamal, counsel appearing for the respondents. The main thrust of the counsel for the applicant is that the criminal case registered or tried against the applicant was not in connection with his service and it does not involve any moral turpitude. Further it is submitted that even if the trial court convicted the applicant and sentenced him to go imprisonment, the appeal court has set aside the sentence part as ordered by the trial court and the applicant has been admonished under Section 3 and 5 of the Probation of Offenders Act. In the above circumstances, the counsel submits that as per Section 12 of the Probation of Offenders Act, an order under Section 3 is equal to that of acquittal. If so, it is the duty of the Department to consider the case of the applicant for promotion along with his junior if he is qualified to be promoted without considering the judgment of the Criminal Court.



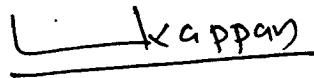
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4. After considering the arguments and also other documents produced before this Tribunal, we are of the view that the Original Application can be disposed of by directing the 2nd respondent to consider the Annexure A-7 representation and pass appropriate orders thereon within sixty days of the receipt of a copy of this order. It is also made clear that the Original Application can be treated as a petition along with the representation as petition filed before the authority. Hence, we are directing so and the applicant is directed to produce a copy of the Original Application along with Annexure A-7 representation for implementation of the order. Ordered accordingly.

(Dated this the 22nd day of June 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER

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K. THANKAPPAN
JUDICIAL MEMBER