

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 384
XXX No.

199 1

DATE OF DECISION 4-9-19 91

K.C.Vijayan _____ Applicant (s)

Mr. O.V.Radhakrishnan _____ Advocate for the Applicant (s)

Versus

Collector of Central _____ Respondent (s)
Excise, Kochi & 6 others.

Mr. P.Sankarankutty Nair _____ Advocate for the Respondent (s)
(for R-1 to R-3)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Administrative Member

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✗
3. Whether their Lordships wish to see the fair copy of the Judgement? ✗
4. To be circulated to all Benches of the Tribunal? ✗

JUDGEMENT

N.V.Krishnan, AM

The applicant is presently working as a Superintendent of Central Excise in Kannur. He is aggrieved by the (Exbt.A7) impugned order dated 29.11.90 by which the 4th respondent, Smt. S.Gangadevi has been promoted, purely on adhoc basis, to officiate in the grade of Assistant Collector of Customs and Central Excise/Senior Superintendent of Central Excise in the Junior Time Scale of Rs 2200-4000. According to him, there is a judgement of the High Court of Kerala upholding his claim that, in the rank of Inspector of Central Excise, he is senior to Respondents 4 to 7 and a direction in the writ appeal arising from that judgement that promotions of Respondents 4 to 7 made in the meanwhile

should be reviewed and that effect has still not been given to these judgements. He has, therefore, prayed for the following directions:

- (i) To call for the records relating to Exbt. A7 order dated 29.11.90 and also the order promoting the 5th respondent to the grade of Assistant Collector of Customs and Central Excise/Senior Superintendent of Central Excise and to set aside the same.
- (ii) To direct the respondents 1 to 3 to assign rank and seniority to the applicant over respondents 4 to 10 in OP No. 4489/1977 in the cadre of Inspector of Central Excise and to review the promotions already made in the grades of Superintendent of Central Excise/Senior Superintendent of Central Excise in implementation of Exbts. A1 and A2 judgement of the Hon'ble High Court of Kerala forthwith.
- (iii) To direct the respondents 1 to 3 to arrange to convene a review Departmental Promotion Committee immediately for reviewing the promotions already made in the grades of Superintendent of Central Excise./ Assistant Collector of Customs and Central Excise/Senior Supdt. of Central Excise immediately considering the impending retirement of the applicant.
- (iv) To direct the respondents 1 to 3 to promote the applicant to the grades of Superintendent of Central Excise, Assistant Collector of Customs and Central Excise/Senior Supdt. of Central Excise with effect from the respective dates of his entitlement and to grant him all consequential service benefits without further delay within a time frame that may be fixed by ~~the~~ this Tribunal."

2. The claim of the applicant for a higher seniority in the rank of Inspector has a chequered career. For our purposes, it is sufficient if the bare facts relevant for the disposal of the present application are highlighted.

2.1 The applicant was promoted as Inspector of Central Excise from the rank of Sub Inspector on 4.8.70. The Respondents 4 to 7 who are in the ministerial side were also promoted in October 1970.

2.2 However, in the seniority list of Inspectors as on 4.1.72, the applicant was shown much below Respondents 4 to 7 and certain others.

2.3 He, therefore filed OP 4489/77, impleading 7 contesting Respondents, including the Respondents 4 to 7 in the present application. That petition was allowed on 20th March 1979 and the impugned seniority lists were quashed (Exbt. A1). The Collector of Customs and Central Excise, Cochin, the third Respondent therein, was directed to fix the seniority of the applicant vis-a-vis Respondents 4 to 10 therein, ignoring the notional dates of promotion assigned to them as a result of which alone they were deemed to be senior to the applicant.

2.4 The two writ appeals against this judgement filed by the Department and one of the contesting Respondents (Writ appeal No. 144 and 145/79) were dismissed on 26.6.81 (Exbt. A2) with the following directions :

"In the case of respondents 4 to 10, as rightly pointed out by the learned Single Judge, no earlier date of promotion was given and therefore been the seniority could not have been conferred on them retrospectively. It is therefore rightly said by the learned Single Judge that the petitioner is senior and respondents 4 to 10 are not entitled to ranks above the petitioner in the seniority list. Therefore apart from any questions of the petitioner being entitled to an earlier promotion an adjudication of which question is not called for in this case because there is no challenge at ~~all~~ the instance of respondents 4 to 10 to the conduct of the 3rd respondent- the petitioner is entitled to succeed in the OP. This appeal is hence dismissed. Further promotion of respondents 4 to 10 if any effected ~~during~~ the pendency of the proceedings here have to be reviewed in the light of the decision here expeditiously."

2.5 The applicant alleges that a revised seniority list in terms of the Exbt. A1 judgement has not been prepared and therefore he has prayed for a direction to the Respondents 1 to 3 (Department, for short) to assign him rank and seniority in terms of the Exbt. A1 judgement. A clear indication is not given as to what transpired after the Exbt. A2 writ appeal judgement was delivered. However, paras 4 to 6 of the judgement in a subsequent writ appeal No;311/84 (Exbt. A3) throws light on this matter.

Para 4 of that judgement is reproduced below:

"4. It is in pursuance of the directions of this Court in Exbt. P13 that the Collector of Central Excise prepared a seniority list as per Exbt. P15 dated 1st January 1980. That appears to be a provisional list and objections to the same were called. Though the list finalised after considering the objections to Exbt. P15 has not been produced and not adverted to, the same having been placed for our perusal during the course of the argument, we propose to advert to the same as well. The list was finalised on 16.2.82. In Exbt. P15, the rank assigned to Vijayan is 47 and that assigned to Gangadevi is 68. In the final seniority list dated 16.2.82, the rank assigned to Vijayan is 50 and that assigned to Gangadevi is 71. The ranks have been assigned on the basis that Vijayan came into the cadre of Inspector on 5.8.1970 and that Gangadevi came into the cadre of Inspector on 8.10.1970."

These ranks have been given on the basis that the applicant came into the cadre of Inspector on 5.8.70 and Smt. Gangadevi on 8.10.70. Smt Gangadevi presented a representation on 5.11.81 against the low rank assigned to her. That was rejected without assigning any reason though the reason disclosed before the High Court was that the Department felt that it was precluded from considering that representation in view of the decisions in the writ appeals vide Exbt. A2 judgement.

Smt. Gangadevi, therefore, filed OP 1586/82 in which it was held on 24.2.84 that neither the judgement at Exbt. A1 or A2 stood in the way of disposing L ~~XXXXX~~ of that representation.

Against that judgement, the present applicant filed writ appeal 311/84 in which judgement was delivered on 13th March 1986 (Exbt. A3). That appeal was dismissed with the following directions:

"17. It is, therefore, obvious that the authorities have to consider the request of Gangadevi made in Ext. P1 and the further representation which the learned single judge has permitted her to make. We also make it clear that any other person, similarly situated if he/she submits a representation, that representation shall be considered only after giving an opportunity to persons who are likely to be affected of showing cause in the matter.

18. Before concluding, we would like to say having regard to the long history of the case which has affected the right of the parties, justice demands that before taking any decision on the representation of Gangadevi or others similarly situated, no adverse decision affecting the rights of the parties should be without giving them an opportunity of showing cause in the matter."

2.6 In pursuance of Exbt. A3 judgement, Smt. Gangadevi presented a representation to the second respondent on 4.6.84. It is seen from para 6 of the reply affidavit that this representation was rejected by the second respondent and the decision was communicated to her in August 1988.

2.7 The applicant states that he came to know about this only in 1990 and, therefore, he sent the Exbt. A6 representation dated 2.5.90 to the Collector of Customs And Central Excise, Cochin.

It was stated therein that in view of the rejection of her representation, Smt. Gangadevi and other respondents in OP 4489/77 should be placed below the applicant in the seniority list and consequential reliefs in terms of promotion to higher posts should be given. No action has been taken thereon.

2.8 In the meanwhile the respondents 4 to 7 were promoted to the next higher rank of Superintendent of Central Excise and in the provisional seniority list of Superintendents, Group-B, as on 1.1.89 (Exbt. A5), the Respondents 4 to 7 have been placed above the applicant.

2.9 In addition, the 5th Respondent has also now been given an adhoc promotion as Assistant Collector of Customs and Central Excise/Sr. Supdt. of Central Excise by the impugned Ann.A7 order.

It is in these circumstances that the application has been filed and the reliefs as mentioned above have been sought.

3. The Respondents state that a revised seniority list of Inspectors as on 1.1.80 was prepared based on the judgement in OP 4489/77 (Exbt. a1). It was also submitted that in OP 1586/82 the 5th Respondent Smt. Gangadevi obtained a stay order against the revised seniority list. Ultimately, that OP was allowed and the writ appeal filed against it by the applicant was dismissed. It was directed that the representation of Smt. Gangadevi be considered. As stated above, her representation was rejected in August 1988.

4. The main plank of the Respondents is that on the basis of the revised seniority list the applicant stands at Sl.No.47 and the Respondents 4 to 7 were ranked at Sl.No.s 68, 67, 70 and 69 respectively.

Para 7 of the reply affidavit then proceeds to state as follows:

"The matter of eligibility of applicant for promotion to the cadre of Superintendent of Central Excise on the basis of his revised seniority position has been examined. On a perusal of the minutes of the Departmental Promotion Committee held on 25.11.80 and 26.5.81 it is seen that though applicant came above respondents 4 to 7 in the revised seniority list he would not have been placed above them in the select panel for promotion to the cadre of Superintendent of Central Excise. Promotion to the cadre of Supdt. of Central Excise is by election and seniority in the cadre is determined by the rank in the select panel and not by the seniority in the feeder cadre. Smt. Gangadevi and Shri T. Mahadeva Iyer were the only two Inspectors assessed as 'Very good' by the Departmental Promotion Committee and therefore they would rank above the other Inspectors who were assessed as 'Good' only in the select panel. Similarly in the case of Shri E. Balan and Shri V. Ramankutty both of them belong to Scheduled castes and therefore they would be given promotion against SC quota vacancies and selected before Shri K.C. Vijayan. Hence it may be seen that applicant cannot claim seniority over respondents 4 to 7 in the cadre of Supdt. of Central Excise even though he is senior to them in the feeder cadre i.e. in the cadre of Inspector of Central Excise as per the revised seniority list. Similarly his claim for promotion to the cadre of Assistant Collector/ Sr. Supdt. is earlier than Smt. Gangadevi and others is also not sustainable in view of ranking made for the purpose of promotion."

The respondents therefore contended that the application has no merit and it should be dismissed.

4. We have heard the counsel and perused the records. The prayer of the applicant to direct the Respondents to assign him rank and seniority in the grade of Inspector over Respondents 4 to 10 in OP 4489/77 does not now survive in view of what has been stated in para 4 of the judgement in writ appeal 311/84 (Ann.A3) extracted above. That extract shows that a

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final seniority list had already been prepared.

asked

5. We ~~xxxxxx~~asked the learned counsel of the Respondents whether the extract from para 7 of their reply reproduced above represents the views of the Departmental Promotion Committee which considered the relative suitability of the applicant and the contesting respondents. He submitted that these are only the views of the Respondents and the matter has not yet been gone into by any DPC.

6. Admittedly, the Respondents have given effect only to the direction regarding preparation of seniority list of Inspectors. There was a further direction in the judgement in writ appeal No.144 and 145/79 (Exbt. A2) to the effect that promotions of Respondents 4 to 10 in the OP, if any, effected during the pendency of the proceedings in the High Court have to be reviewed in the light of their decisions.

7. We notice that on the basis of the original seniority granted to the 4th respondent and others, which was successfully impugned by the applicant in OP 4489/77, the Respondents 5 to 10 had been promoted as Superintendent of Central Excise and, in the seniority list of this cadre as on 1.1.89 (Exbt. A5), the applicant has been placed below the Respondents 4 to 7, were because they ~~xxx~~shown to have been promoted from dates prior to 20.10.81 on which date only the applicant was promoted. In view of the fact that the applicant is senior to the Respondents 4 to 7 in the grade of Inspector of Central Excise, he is entitled to be considered for promotion to the post of Supdt. of Central Excise on every occasion on which the 4 respondents were promoted, i.e. on 1.12.80, 15.12.80 and 15.6.81. Therefore, it is necessary for a Review

DPC to consider the case of the applicant along with the Respondents 4 to 7 as and when they were considered for promotion.

8. The reply in para 7 that the matter of eligibility of the applicant has been considered and that it cannot be given preference over respondents 4 to 7 is not only unwarranted but unfortunate. The grading is a matter to be left to a DPC or a Review DPC. The respondents need not have expressed any opinion at all in this regard. The applicant, however, points out that if he is considered for a vacancy as on 1.12.80 by the Review DPC (i.e. the date of promotion of respondent-4), the 4th respondent would not have been even in the zone of consideration and therefore the question of making any relative assessment between their merits would not have arisen at all. We do not express any opinion in this regard because, in our view, these are matters to be dealt with by the DPC.

9. The applicant has impugned the Exbt. A7 order by which the 5th respondent has been promoted to officiate as Asstt. Collector of Customs & Central Excise/Sr. Supdt. of Central Excise in the JTS purely on an adhoc basis. As the promotion is purely on an adhoc basis, it cannot be said that the applicant has a right to be promoted in the same manner. If, however, it is found on a review by the DPC that Smt. Gangadevi, the 5th respondent, would become junior to the applicant in the grade of Supdt. of Central Excise, Group-B, the applicant's case for adhoc promotion would require consideration. For, even for adhoc promotion, the

seniority list had to be considered. Therefore, the relief, if any, in respect of Ann.7 will depend upon the results of the Review DPC meeting.

10. For the foregoing reasons we allow this application with the following declarations/directions:

(a) The applicant's seniority in the grade of Inspector over Respondents 4 to 7 should be treated as having been finally settled by the judgements at Exbt. A1 and A2 and the rejection of the representation of the 5th respondent in August 1988. Therefore, the seniority list which was finalised on 16.2.82 and which was produced before the High Court of Kerala in writ appeal No.311/84 (Ann.3), as mentioned in para 4 of that judgement, should be treated as final. The applicant was ranked at S.No.50 and the 5th respondent was ranked at S.No.71 in that list. The places of the other respondents should be also be determined on the basis of this seniority list.

(b) The Department is directed to convene a Review DPC meeting which will examine the claims of the applicant also for promotion to the rank of Supdt. of Central Excise Group B on the dates on which the Respondents 5 to 7 were promoted as if the DPC was meeting at the time when the names of the Respondent 4 to 7 were approved for such promotion .

(c) If the Review DPC finds that the applicant has a preferential claim over one or more of the Respondents 4 to 7, the Department is directed to promote the applicant from that date and grant him all consequential benefits, including re-fixation of pay and payment of arrears.

Such promotion should be granted, if necessary, by creation

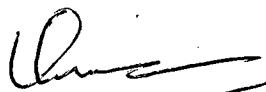
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of supernumerary post.

(d) In case the applicant is placed senior in the list of Supdt. of Central Excise to Smt. S. Gangadevi, the Department is also directed to consider the claims of the applicant for adhoc promotion to officiate as Asst. Collector of Customs & Central Excise/Sr. Supdt. of Central Excise in the JTS subject to the same terms and conditions as mentioned in Exbt. A7. This gains importance as the applicant is due to retire in November, 1991. In case the applicant is found fit for such adhoc promotion, he shall be granted such promotion, purely on ~~xx~~ a notional basis, from the same date from which the fifth respondent was promoted. The benefit of that notional promotion shall be available to the applicant ~~in person~~ for pecuniary purposes. The actual benefit shall be given to the applicant from the date on which this application was filed, i.e. 5.3.91.

(e) These directions shall be complied with in two months from the date of receipt of this judgement.

11. The application is disposed of accordingly.


4.1x.91
(N. Dharmadan)
Judicial Member


4/9/91
(N.V. Krishnan)
Administrative Member