

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.403/09

Friday this the 9th day of July 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.T.Chacko,
Inspector of Central Excise,
Air Customs Unit, Thiruvananthapuram.

...Applicant

(By Advocate Mr.C.S.G.Nair)

V e r s u s

1. The Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Cochin – 18.
2. The Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Cochin – 18.
3. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi – 1.
4. Union of India represented by its Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.
5. P.K.Pran,
S/o.K.A.Krishnan,
Inspector Central Excise,
O/o. the Commissioner of Customs, Central Excise
and Service Tax, CR Building, I.S.Press Road,
Cochin – 18.
6. S.K.Chitra,
W/o.A.Kannan,
Inspector Central Excise,
O/o. the Commissioner of Customs, Central Excise
and Service Tax, CR Building, I.S.Press Road,
Cochin – 18.

...Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC [R1-4] & Mr.R.Sreeraj [R5-6])

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This application having been heard on 9th July 2010 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER


The applicant's grievance in this case is that he has not been granted the seniority in the cadre of LDC with effect from 11.6.1981 ie., the date on which he was promoted to that post on ad hoc basis.

2. The brief facts of the case are that the applicant was originally appointed as a Group 'D' employee (Sepoy). He was eligible for promotion to the post of LDC. In terms of the Central Excise and Land Customs Department Group 'C' posts Recruitment Rules 1979, 10% of the vacancies are earmarked for qualified Group 'D' employees for promotion after passing the departmental examination. Since no direct recruitment to the post of LDC has taken place for fairly long time, the applicant and other 10 others were promoted as LDC on ad hoc basis with effect from 11.6.1981. According to the applicant, since there was a move to fill up those 11 vacancies of LDC by absorbing the surplus staff from the surplus cell in the year 1984 they approached the Hon'ble High Court of Kerala in a Writ Petition seeking regularisation of their service, which was disposed of on 28.11.1984 with a direction to the applicant to make a representation for regularisation and to the respondents in turn to consider the same in accordance with the rules. Thereafter, they submitted their representations but the respondent department directed them to compete along with other eligible candidates in the competitive examination being held by the Staff Selection Commission. Aggrieved by the aforesaid stand taken by the

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respondents they approached this Tribunal again by filing OA 952/91 which was disposed of vide Annexure A-1 order dated 24.1.1992 directing the respondents to regularise them with immediate effect as LDC by appropriate relaxation of the Recruitment Rules without subjecting them again to any further test or selection. Pursuant to the aforesaid direction, the respondents regularised their services and the date of regularisation of the applicant's service was with effect from 24.1.1992 and granted seniority to him in the said grade from the aforesaid date. However, they made representation to the respondents to grant them seniority from the respective dates of their ad hoc appointment itself. As the respondents did not concede to their request they once again approached this Tribunal by filing OA 283/93 but the same was dismissed vide order dated 28.6.1994 observing that the applicants were granted regularisation by relaxation of the provisions of the Recruitment Rules and in the absence of any such provision for relaxation they would have continued only as Group 'D' employees. The applicants filed RA 63/94 in the aforesaid OA but the same was also dismissed vide order dated 8.9.1994. Even though the applicants therein did not challenge the aforesaid order in any higher forum, the applicant continued to make representations to the respondents. The respondent department considered his request and sought legal opinion from the Ministry of Law, Justice and Company Affairs which vide Annexure A-5 letter dated 13.8.2002 stated that the applicant was entitled to get seniority from his initial date of appointment but since the aforesaid OA 283/93 has become final as the same was not challenged before the higher forum they have advised the department to take a sympathetic view in his case and to provide all consequential benefits. On the basis of the

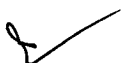


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aforesaid advise the 1st respondent, namely, the Commissioner of Central Excise and Customs, Cochin, has taken up the matter with the 4th respondent, namely, Secretary, Department of Revenue, Ministry of Finance, New Delhi, to grant post ex-post facto approval for continuance of ad hoc promotion to the applicant. The Department of Revenue, however, vide Annexure A-7 letter dated 8.6.2004 observed that the continuation of the applicant was without the approval of the Board and DoPT and, therefore, they asked the 1st respondent to sent a proposal seeking ex-post facto approval of the DoPT for continuation of ad hoc promotion which was not obtained earlier. As the applicant continued to make representations, the 1st respondent, vide Annexure A-10 dated 25.10.2007 informed him that the Ministry's decision in the matter is still awaited.

3. Shri.C.S.G.Nair, counsel for the applicant, during the argument has submitted that his only request on behalf of the applicant at this stage is that the respondents should be directed to take a decision in the matter as early as possible and communicate the same to the applicant.

4. The 1st respondent has filed a reply statement on behalf of all the respondents stating that with the orders of this Tribunal in OA 283/93 and in RA 63/94 (supra), the matter has already been settled and attained finality and the present application is hit by res-judicata. Therefore, this Tribunal cannot entertain this application. The private respondents have also taken the same stand. They have further submitted that the applicant has raked up the very same issue after 15 years and, therefore, this application is barred by limitation also.



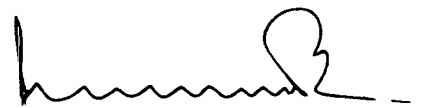
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5. We have given our anxious consideration to the submissions made by the counsel for the parties. It is seen that the prayer of the applicant in this OA is to grant him seniority in the grade of LDC from 11.6.1981 on which date he was appointed on ad hoc basis. He had agitated the very same issue along with similarly placed other persons in OA 283/93 which was dismissed by a detailed and speaking order by this Tribunal. Thereafter, they have filed RA 63/94 in the aforesaid OA and the same was also dismissed. As the applicant has never challenged the said orders in any higher judicial forum, they have attained finality. Therefore, as rightly argued by the SCGSC Shri.Sunil Jacob Jose on behalf of the respondents, this case is hit by res-judicata. It is altogether a different matter that the respondents have been entertaining the applicant's further representations seeking the same relief and they have been considering it. Once the matter has already been decided on merits, it is most inappropriate and illogical for this Tribunal to direct the respondents to take a decision on his representation and to communicate the same to him as submitted by the counsel for the applicant, Shri.CSG Nair. We, therefore, dismiss this OA. There shall be no order as to costs.

(Dated this the 9th day of July 2010)



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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