

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 408 OF 2011

Monday, this the 10th day of October, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

M.K.Gopinathan
Deputy Commissioner
Central Excise, Service Tax Division
Kaloor, Kochi - 17 ... Applicant

(By Advocate Mr. P.Ramakrishnan)

versus

1. Central Board of Excise & Customs
represented by its Chairman
New Delhi – 110 001
2. Chief Commissioner
Central Excise & Customs
Kerala Zone
Kochi – 18
3. Commissioner of Central Excise & Customs
Cochin Commissionerate
Central Revenue Building
IS Press Road, Kochi – 18 ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 10.10.2011, the Tribunal on the same day delivered the following:


ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER


The applicant is a Deputy Commissioner in the Central Excise and Customs Department under the 3rd respondent. The applicant is due to retire by 29.02.2012. The applicant is aggrieved by the non consideration of his case for promotion due in 1985 when his juniors were promoted. It is the case of the applicant that he was considered for promotion only in 1989. The non promotion of the applicant along with his juniors in 1985



was due to an adverse remark in his ACR, that too by an officer who is neither the Reporting Officer nor the Reviewing Officer and which came to the knowledge of the applicant only when information was sought for under the Right to Information Act. The appeal preferred did not yield any result. Detailed representations, Annexures A-2 and A-3 were made which was disposed of by Annexure A-4. The case has been dealt with elaborately by the Commissioner and he has recommended the case to the Chief Commissioner of Central Excise and Customs. It is said on perusal of the records from 1985 onwards reveal that the applicant was eligible to be promoted in the year 1985 itself and in the light of the above submission, a review DPC may be convened for notional promotion to the post of Superintendent against the vacancies of the year 1985. Thus his representation was favourably considered and recommended for consideration of the matter by conducting a review DPC. On behalf of Chief Commissioner, Annexure A-5 order is passed in a single line stating that " the matter cannot be reopened without the relevant records ". While Annexure A-4 proceedings were issued by the Commissioner of Central Excise and Customs after perusing the records and specifically stating that he has seen from the records that the applicant's case was settled on the basis of a wrong order. Why and how the higher authorities say that there were no records available. If at all no records were placed before the Chief Commissioner, he ought to have called for the records from the lower authorities and perused the orders and appropriate orders should have been passed. This has not been done. Therefore, we are satisfied that justice has not been done in the case of the applicant. Rejection of the representation by Annexure A-5 with a single line is per se, wrong and illegal and we quash the same.



2. It is an admitted fact the juniors of the applicant were promoted in the year 1985. The non consideration of the applicant's case was due to adverse remarks made by an officer not competent. There are two levels for writing the C.Rs i.e., the Reporting Officer and the Reviewing Officer, the remarks by an officer other than the Reporting Officer and the Reviewing Officers in the Confidential report are not in order as per the letter of the DGP & T letter No.27-2/83-Vig.II dated 21.01.1983. That instructions is still in force as found by the Commissioner himself in Annexure A-4. On perusal of the records by the Commissioner he found that in the applicant's case, both the Reporting Officer and the Reviewing Officer has not given any adverse remarks. The Officer has not been found fit for promotion by the adverse remarks made by the Additional Collector, who is not competent to countersign the ACR. Though the applicant had sought to expunge the adverse remarks, the real fact of making adverse remarks was not known to the applicant which he came to know based on the Right to Information Act. Since the non consideration was based on an adverse remarks made by the in competent authority it is non est in law. If so, as recommended by the Commissioner in Annexure A-4 a review DPC should have been held to consider the case of the applicant for promotion in the year 1985 along with his juniors notionally so that at least at the time of retirement last pay drawn are calculated for pension, in case he is found fit for promotion. In the factual situation, therefore, we direct the Chief Commissioner of Central Excise and Customs to convene a review DPC for consideration for promotion to the post of Superintendent as against the vacancies for the year 1985 within a period of six weeks from today. If the applicant is found eligible for promotion such



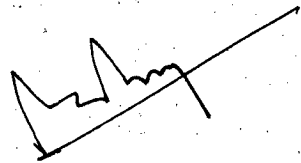
consequential benefits shall be worked out notionally and inform the applicant within six weeks thereafter.

3. OA is disposed of as above. No costs.

Dated, the 10th October, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS