

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

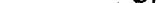
O.A.No.408/2001,

Tuesday this the 1st day of January 2002.

'CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

C.S.Gopalakrishnan Nair,
Superintendent of Central Excise (Rtd.),
Nenmeli Gokulam, Jawan Cross Road,
Ponekara, Cochin-682 026. Applicant

(By  Shri C.S.Gopalakrishnan Nair Party-in-charge)

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1. Commissioner of Central Excise & Customs,
Cochin--I Commissionerate,
Central Revenue Buildings,
I.S.Press Road,
Cochin--682 018.
2. The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi-1.
2. Union of India, represented by the
Secretary, Ministry of Personnel,
Public Grievances & Pension,
South Block,
New Delhi-110001.

(By Advocate Shri R.Prasanthkumar ACGSC)

The application having been heard on 1st January 2002 the Tribunal on the same day delivered the following:

Q B D E B

HON'BLE MR.A.V.HARIKANAN VICE CHAIRMAN

The applicant, who initially joined the service of the Hyderabad Central Excise Collectorate as LDC, was, in the year 1965 appointed as Inspector of Central Excise in the direct recruitment quota. He joined the post on 23.9.65. He was later given an inter-collectorate transfer to Cochin Collectorate where he joined on 16.2.1975 on bottom seniority. On the basis of the order of the Central Administrative Tribunal in O.A.601/93 as also of the Apex Court in SLP

No.6734/96, the Government of India, Ministry of Finance, Department of Revenue issued O.M.dated 20.10.98 directing implementation of Clauses (i) and (ii) of the Ministry's O.M. No.6/97/57-Ad.IIIA dated 12.2.1958 to the non-gazetted staff in the Central Board of Excise and Customs who took inter-Collectorate transfer before 20.5.1980. On the basis of the above order A-1, a revised provisional seniority list of Inspectors (OG) as on 20.5.80 was circulated by letter dated 27.8.99 (A2). The applicant was placed at serial No.90 in the above gradation list immediately below one I.Sankaranarayana Menon. The grievance of the applicant is that when the provisional seniority list was made final, vide letter dated 4.7.2000, the applicant's place in the gradation list was pushed down to serial No. 140. He was placed below Shri C.D. Damodaran Elayath who joined the post of Inspector on 23.7.73. According to the applicant, he should have been given the first position in the recruits of the year 1972. Objecting to the lower position in seniority assigned to him in the A-3 seniority list, the applicant made a representation (A-4) dated 27.7.2000 and sought a personal hearing by A-5 letter dated 5.10.2000. The representation A-4 made by the applicant was considered and he was given a personal hearing. After that the impugned order A-6 was issued by the first respondent rejecting the claim of the applicant for placement between serial No.92 and 93 on the ground that, Damodaran Elayath though actually was appointed in the year 1973, having been appointed towards the vacancy that existed prior to 1972, he had to be placed above the recruits of 1972 and on adjustment of quota between promotees and direct recruits. The applicant was placed at Sl.No.140 in the seniority list as is shown in A-3 correctly.

Regarding the further benefits claimed by the applicant, it has been stated in the impugned order that as the applicant had already retired, he was entitled to only notional seniority and **not** monetary benefits. The applicant is also aggrieved by the instructions contained in the Memorandum of the Department of Personnel and Training O.M.No. 22011/4/98-Estt, (D) dated 12.10.1998 (A-7), wherein it has been stipulated while the names of the retired officials may also be included in the panel(s) on revision of seniority they need not be considered for actual promotion. The applicant has, therefore filed this application seeking the following reliefs.

- i) Declare that the instructions to the effect that 'retired officials would, however have no right for actual promotion' as given in A-7 as ultra vires and quash the same.
- ii) Declare that the applicant is eligible for notional Seniority as given A-2 and all consequential benefits like promotion and monetary benefits.
- iii) Direct the 1st and 2nd respondents to implement Annexure A-1 order by conducting review DPCs for Senior Grade Inspector, Superintendent Group B and Assistant Commissioner (Group A) and to grant consequential monetary benefits within a stipulated period.
- iv) Grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper.
- v) Cost of this Original Application."

2. The respondents have filed a reply statement and an additional reply statement, resisting the claim of the applicant for placement between Serial No.92 and 93 on the ground that on receipt of representation against the proposal contained in A-2 provisional seniority list, the matter was considered and the applicant was given the due placement. They contend that though the applicant was recruited on 16.2.1972,

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Shri Damodaran Elayath having been appointed against vacancies which existed prior to 1972, he and those promoted in between had to be assigned seniority above those recruits of 1972 and therefore, the applicant has been rightly placed below Damodaran Elayath. The challenge to Annexure A-7 is resisted by the respondents on the ground that actual promotion cannot be given to an officer who ceased to be in service. Regarding the other claims of the applicant for consequential benefits, the respondents contend that the applicant, would have been entitled to the benefits arising out of A-1 only in case he had continued in service after issuance of A-1 and that because of the applicant retired prior to issuance of A-1, he is not entitled to any further benefits.

3. We have given our anxious consideration to the various facts and circumstances which emerged from the pleadings and the material placed on record. The prayer of the applicant for setting aside A-7 memorandum is unsustainable because we do not find anything objectionable in the said memorandum which calls for interference. Though retired officials have to be considered while preparing the revised seniority/eligibility list, they cannot be given actual promotion for a person who is out of service cannot be actually promoted. Therefore, the relief sought for in sub para (i) of paragraph 8 of the O.A. is to be declined. Coming to the prayer of the applicant for a declaration that he is eligible for notional seniority as given in A-2, we find that the applicant has no valid claim in that regard. Although in the provisional seniority list, the applicant was placed at Serial No.90, on receipt of representations from the affected persons, the matter was

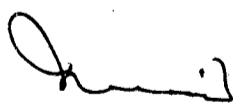
examined. Shri Damodaran Elayath though was appointed in the year 1973, having been appointed against a vacancy in existence prior to 1972 and those who were promoted during 1971 had also to be adjusted according to quota rota on the vacancies which existed prior to 1972. The applicant therefore was given the due placement in A-3. We do not find any reason to interfere with this placement. However, on the basis of A-1 order the applicant has been given notional seniority as is seen in A-3. The question is to what benefit the applicant would be entitled on the basis of the revised seniority. The contention of the respondents that the applicant apart from being entitled to notional seniority as given in Annexure A-3 is not entitled to any other consequential benefits as he retired prior to the date of issue of Annexure A-1 is absolutely untenable. On the basis of the improved seniority position as assigned in Annexure A-3 the applicant would be entitled to consideration for promotion to higher posts. The respondents have to consider the applicant for promotion as Senior Grade Inspector, Superintendent Group B as also Assistant Commissioner (Group A), although the applicant would not be entitled to the monetary benefits, if he is promoted notionally as Assistant Commissioner (Group A). Since the applicant has held the post of Senior Grade Inspector as also Superintendent, in case DPC finds the applicant suitable for promotion with effect from earlier dates to those posts, he should be given fixation of pay and also arrears for the period he had worked on these posts on the basis of such fixation.

4. In the light of the above discussions, the application is disposed of with the following declarations and directions.

(Signature)

The prayer of the applicant at sub para (i) & (ii) of para 8 of the application are rejected. The respondents 1 & 2 are directed to consider the case of the applicant for promotion as Senior Grade Inspector, Superintendent Group 'B' and Assistant Commissioner (Group A) on the basis of his position in the Seniority list (A-3) by convening Review DPCs. If he is recommended by the review DPC for promotion as Inspector (Senior Grade) and Superintendent Group B with effect from anterior dates than the dates on which he was actually promoted, he should be given notional fixation of pay and arrears for the period during which he had actually worked on those posts and shouldered higher responsibilities. If the applicant is found suitable for promotion as Assistant Commissioner (Group A), he should be given the notional promotion but without financial benefits. However, the terminal benefits of the applicant should be worked out on the basis of the notional promotion and fixation of pay. The abovesaid exercises shall be complied with within a period of six months from the date of receipt of a copy of this order and the monetary benefits flowing therefrom shall also be made available to him within a period of two months thereafter. No costs.

Dated the 1st January 2002.


T.N.T. NAYAR ~
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

APPENDIX

Applicant's Annexures:

1. A-1 : A true copy of the order F.No.A/23024/4/94-
Ad.III(A) dated 20.10.98.
2. A-2 : A true extract of the Seniority list issued on
27.8.1999.
3. A-3 : A true extract of the seniority list of Inspectors
as on 20.5.1980 issued in C.No.II/34/15/99-Estt.I
dated 4.7.2000.
4. A-4 : A true copy of the representation dated 27.7.2000.
5. A-5 : A true copy of the representation dated
5.10.2000.
6. A-6 : A true copy of the memo C.N.oII/34/13/2000-Estt
dated 12.01.2001 issued by the 1st respondent.
7. A-7 : A true copy of the order O.M.No.22011/4/98-Estt(D)
dated 12.10.98 issued by the 3rd respondent.
8. A-8 : A true copy of the representation dated 25.7.97
submitted by the applicant.

Respondents' Annexure:

1. R-1 : Copy of Hon'ble Tribunal's Order dated 9.12.1992
in O.A.No.1015/90.

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