

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A.No.413/2002

C O R A M: Monday this the 19th day of July 2004

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

S.Balakrishnan Nair,  
S/o G.Sreedharan Nair,  
UDC, Appraising Department,  
Customs House,  
Kochi - 9.

(By Advocate Mr.KCC Raja) (not present)

Applicant.

Vs.

1. Union of India represented by Secretary to the Govt, Ministry of Finance, Deptt.of Revenue, New Delhi.
2. Central Board of Excise & Customs represented by Secretary, North Block New Delhi.
3. The Commissioner of Customs Customs House, Kochi-9
4. The Asstt.Commissioner of Customs (Estt) Customs House, Kochi-9.

Respondents

(By Advocate Mr.C.Rajendran, SCGSC (rep.)

The O.A having been heard on 19.7.2004 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who joined Kochi Customs Commissionerate as Lower Division Clerk on 2.8.1976 is aggrieved that for the pendency of confirmation and disciplinary proceedings, the applicant was not considered for promotion on par with his juniors and his representation in that regard claiming promotion in due time on par with his juniors has been turned down by the impugned orders Annxs.A3 and A5. It is alleged in the application that once the applicant was confirmed and the

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disciplinary proceedings were dispensed with by awarding him only 'censure' there had been no impediment in promoting and therefore, he should have been promoted with retrospective effect on par with his juniors. With these the applicant has filed this application seeking to set aside Annxs.A3 and A5 and for a direction to the 2nd respondent to give due promotion to the applicant on par with Shri.T.L.Thomas and Shri P.N.Aravindakshan assigning him appropriate position in Annx.A5 and to grant all consequential benefits. He has alternatively prayed that the 3rd respondent be directed to consider the representation Annx.A4 afresh without reference to Annx.A3 order.

2. The respondents seek to justify the impugned orders on the ground that regularisation of the applicant as LDC on account of his not passing the obligatory typing test, the pendency of disciplinary proceedings and the award of penalty delayed the promotion and therefore he is not entitled to the relief sought for.

3. As neither the applicant nor his counsel was present even on second call and they were absent on previous occasion also we do not find any good reason to adjourn the case any further. We have therefore carefully gone through the pleadings and materials on record and heard the arguments of the learned counsel of the respondents.

4. The learned counsel of the respondents argued that the

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non-promotion of the applicant on par with his juniors was for the reasons attributable to the applicant alone as he got qualified the typing test late and was awarded penalty of withholding of increment as also penalty of censure.

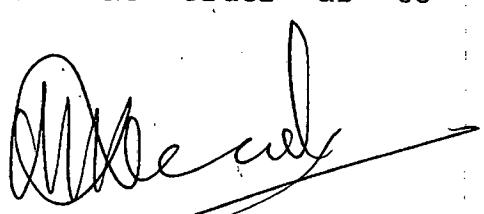
5. However, on going through the pleadings and the impugned order, we find little explanation has been given as to why the applicant was not considered for promotion once he has passed the obligatory typing test and the period of withholding of promotion had run out. Moreover, we do not find any substance in the contention in the impugned order that on account of the pendency of the disciplinary cases and late confirmation. An employee once conferred even though late the seniority should normally be reckoned from the date of entry and pendency of disciplinary cases also would not normally affect an employee's seniority. Under these circumstances, we consider it appropriate to direct the third respondent to look into the grievances of the applicant once again and give the applicant a speaking order.

6. In the result, the application is disposed of directing the third respondent to consider Annexure A.4 representation of the applicant giving him an opportunity of personal hearing and dispose of the same with a speaking order within two months from the date of receipt of a copy of this order. No order as to costs.

*H. P. Das*

(H.P.Das)

Administrative Member



(A.V. Haridasan)

Vice Chairman.

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