

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA.

O. A. No. 415 of 1996

Date of order : 28<sup>th</sup> April, 2004.

C O R A M

Hon'ble Mrs. Shyama Degra, Member (Judicial)

Hon'ble Mr. Mantreshwar Jha, Member (Admn.)

Parmeshwar Prasad Suri, son of Late Rupchand Lal, resident  
of Park Road, Golghar, P.S.-Ketwali, P.O.-Patna- District-  
Patna. ... Applicant.

By advocate Shri G. Trivedi.

- Vrs. -

1. Union of India, through Secretary, Central Board  
of Excise & Customs, North Block, New Delhi.
2. Joint secretary, Central Board of Excise & Customs,  
North Block, New Delhi.
3. Principal Commissioner Central Excise & Customs,  
Surbeday Nagar, Kanpur.
4. Commissioner, Central Excise, Central Revenue  
Building, Birchand Patel Path, Patna.
5. Additional Commissioner ( P & V ), Central  
Excise, Central Revenue Building, Birchand Patel  
Path, Patna. .... Respondents.

By advocate Shri V.M.K. Sinha, Id. Sr.S.C.

O R D E R

By Mantreshwar Jha, Member (A) :-

This original application has been filed for  
directing the respondents to consider the case of the  
applicant for promotion to the post of Superintendent

A

and grant him all consequential benefits arising out of such promotion, Alternately the prayer has been made to direct the respondents to dispose of the representation of the applicant pending before them for consideration.

2. The case in short is that the applicant who superannuated on 31.5.1996 from the post of Inspector, Central Excise at Patna, had joined as a Clerk and promoted to the rank of Inspector on 30.7.1976 from the post of Upper Division Clerk. While he was working as Inspector, Central Excise, he was charge-sheeted on 28.10.1981 for alleged fictitious use of leave travel concession claim. After enquiry, he was dismissed from service. Thereupon he preferred an appeal and the appellate authority ordered for a fresh enquiry. After the fresh enquiry was concluded, penalty imposed on the applicant was reduced from dismissal to compulsory retirement w.e.f. 29.5.1986. The applicant filed a revision application before the revisional authority, which was also rejected on 7.7.1988. Thereafter the applicant filed an O.A.No.342/1988 before this court, which set aside the order of compulsory retirement and the order for his re-instatement in service alongwith all consequential benefits except the salary for the period for which he was out of service. The court, however, did not preclude the respondents from proceedings against the applicant on the same memorandum of charges in accordance with law. However, the disciplinary authority

after considering the matter afresh, exonerated the applicant of all the charges, vide Annexure-A/2.

3. The case of the applicant is that since he has been exonerated of all the charges, he should have been promoted to the rank of Superintendent in his turn, which has been denied to him. It is submitted that twice the DPC has considered the case of promotion of Inspectors to the rank of Superintendent and even though he is at Sl. No. 48 in the seniority list and the persons placed at Sl. No. 49 and 50 have been promoted in pursuance of the recommendations of the first DPC and other juniors were promoted in pursuance of the recommendations of the second DPC. The applicant kept on sending representations to all concerned but the same was never considered and he was superseded in promotion and eventually retired on 31.5.1996. The case of the applicant is that since he has been exonerated of all the charges and no enquiry or vigilance case was pending against him nor any adverse report in his ACR was communicated to him, he has been wrongly over-looked for his promotion.


4. Written statement has been filed on behalf of the respondents, wherein it has been submitted that as per recruitment rules, the post of Superintendent, Group 'B' is a selection post and since the applicant was not considered upto mark for promotion, he was not promoted. It has further



been submitted that mere exoneration from charges levelled against the applicant and payment of pay and D.A. cannot be a ground for promotion to a selection post.

5. Rejoinder has been filed to the written statement on behalf of the applicant where the main ground taken is that since no adverse entry in his ACR has been communicated to him, the same cannot be held against him and he has been unjustly excluded from being promoted.

6. We have heard both parties at length and carefully gone through the <sup>& original & pleadings:</sup> records. Admittedly, the applicant had a chequered service record in that he was charge-sheeted, dismissed from service and then he was reduced to compulsory retirement. Only after the intervention of this court, the applicant was re-instated in service without any wages for the period he was out of service. Eventually, of course, he was exonerated of all the charges, and, therefore, remained in service till his date of superannuation. It is admitted position that the post of Superintendent is a selection post and for any selection post, promotion cannot be claimed as a matter of right merely on seniority. In view of the chequered service record of the applicant or indifferent service record as per ACR, if the applicant was not considered for promotion to the post of Superintendent, he cannot legally claim his promotion merely on seniority. We have also carefully



gone through the original record submitted by the respondents and we are satisfied that the applicant has failed to make out a case for his promotion. Since the applicant has already retired about eight years back, we are not inclined to issue any direction to the respondents to consider his representation filed by him in this regard. The applicant is, however, given liberty to file fresh representation to the respondents for consideration of his case in accordance with law, if so advised, which will be considered by the respondents in due course.

7. That being so, the application being devoid of merit is dismissed with no order as to costs.

( Mantreshwar Jha )  
Member (Admn.)

( Shyama Dey )  
Member (Judicial)

MPS.