

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

CIRCUIT SITTING AT PANJIM

Tr. Appln. No. 84/87

Shri Luis Antonio R.J.M. Abreu,
Upper Division Clerk,
Office of the
Commissioner of Excise,
Panaji,
GOA.

.. Applicant

vs.

1. Shri Damasceno B.V.A. Pinto,
Excise Inspector,
DIU.
2. The Commissioner of Excise,
Panaji,
GOA.
3. The Administrator of Goa,
Daman and Diu,
Cabo Raj Niwas,
Dona Paula,
GOA.

4. Union of India

.. Respondents

Coram: Hon'ble Vice-Chairman Shri B.C. Gadgil
Hon'ble Member(A) Shri P. Srinivasan

Appearances:

1. Shri N. Afonso
Advocate for the
Applicant.
2. Shri M.I. Sethna,
Counsel for
Respondent Nos. 2, 3 & 4
3. Shri A.F. Diniz,
Advocate for
Respondent No. 1

ORAL JUDGMENT

Date: 5-7-1988

(Per B.C. Gadgil, Vice-Chairman)

Writ Petition No. 155/85 of the file of the
High Court of Judicature at Bombay, Panaji Bench is
transferred to this Tribunal for decision.

2. The controversy pertains to the promotion
to the post of Excise Inspector. It arises in following
manner:

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3. The applicant entered service as "Aspirante" before the Goa Territory was liberated. After liberation, his post was equated to that of Upper Division Clerk(UDC). He was confirmed in that post on 16-7-1967. The next promotional avenue is to the post of Excise Inspector. It is not ⁱⁿ dispute that the applicant is senior to Respondent No.1 in the seniority list of UDCs. A vacancy in the post of Excise Inspector occurred in the year 1980 as one Excise Inspector was promoted as Excise Superintendent. This vacancy was filled in on adhoc basis in 1985. Respondent No.1 was promoted to the post. The grievance of the applicant is that his claim for promotion has been wrongly rejected. He therefore filed the writ petition in question challenging the promotion of Respondent No.1 and contended that he deserved to be promoted to the post of Excise Inspector.

4. Respondent No.1 as well as the Govt. viz. Respondent Nos. 2 to 4 filed their reply resisting the application. However, it is not necessary to give details of the various contentions raised in the application as this application can be disposed of on a short point with reference to the facts set out below.

5. The DPC proceedings were held on 5-3-1985. The DPC considered the cases of the applicant, Respondent No.1 and also certain other persons. The DPC proceedings have been shown to us and it is clear from those proceedings that the DPC considered the Confidential Reports of the applicant and other eligible candidates for the years 1977-78 to 79-80 and thereafter made recommendations as to who should be promoted.

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3. The applicant entered service as "Assistant" before the Dos Territory was liberated. After liberation, his post was rotated to that of Upper Division Clerk (UDC).

He was confirmed in that post on 16-7-1967. The next promotional avenue is to the post of Excise Inspector.

It is not disputed that the applicant is senior to Respondent No. 1 in the seniority list of UDCs. A vacancy in the post of Excise Inspector occurred in the year 1960 as one Excise Inspector was promoted as Excise Superintendent. This vacancy was filled in on adhoc basis in 1962.

Respondent No. 1 was promoted to the post. The grievance of the applicant is that his claim for promotion has been wrongly rejected. He therefore filed the writ petition in question challenging the promotion of Respondent No. 1 and contended that he deserved to be promoted to the post of Excise Inspector.

4. Respondent No. 1 as well as the Govt. viz. Respondent Nos. 2 to 4 filed their reply resisting the application. However, it is not necessary to give details of the various contentions raised in the application as this application can be disposed of on a short point with reference to the facts set out below.

5. The DPC proceedings were held on 5-3-1965. The DPC considered the cases of the applicant, Respondent No. 1 and also certain other persons. The DPC proceedings have been shown to us and it is clear from those proceedings that the DPC considered the Confidential Reports of the applicant and other eligible candidates for the years 1977-78 to 79-80 and thereafter made recommendations as to who should be promoted.

6. The applicant's case is that there were some adverse confidential remarks in his confidential report for the year 1978-79 against which he had made a representation on 18-3-1980. According to him, that representation was not decided till the DPC held its meeting and made recommendations. Mr. Sethna for Respondent Nos. 2 to 4 fairly conceded that the said representation had not been decided till that time. It is now an accepted position of law that the adverse remarks cannot be considered in case the employee has filed a representation to the appropriate authority and that representation remains undecided at the time when the DPC meets. In view of this position, it will be necessary to direct the respondent Nos. 2 to 4 to arrange a review DPC as detailed below.


7. During the course of the arguments it was contended by Mr. Diniz that the vacancy that arose in 1980 was required to be filled in in ^aregular manner and not on adhoc basis. We do not propose to consider this aspect at this stage. However, we direct the respondent Nos. 2 to 4 to consider this aspect and pass appropriate orders on the basis of the DPC proceedings.


8. ^{the} In result, the application partly succeeds. Respondent No. 2 is directed to decide the representation of the applicant dtd. 18-3-1980 against the adverse remarks in his confidential report for 1978-79 within 3 months from today. Within three months thereafter, a meeting of the DPC should be held to review the case of the applicant for promotion to the post of Excise Inspector as on 5-3-1985 (i.e. when the original meeting of the DPC was held). It is needless to say that the promotion should be considered with respect to the vacancy as it arose in 1980. The question as to whether the vacancy is to be filled on adhoc basis or regular basis should also be reconsidered by the Government.

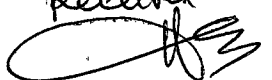
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9. We make it clear that Respondent No.1 should not be disturbed till the above procedure is adopted and final decision is taken by the DPC.

10. Parties to bear their own costs.


(B.C.GADGIL)
Vice-Chairman


(P.SRINIVASAN)
Member(A)

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Received a certified copy
of judgement for
Respondent No. 1

8/7/88