

8

CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 17/88

~~Ex A. No.~~

198

DATE OF DECISION 25-6-1991

C.G.Dabke Petitioner

Mr.M.S.Ramamurthy, Advocate for the Petitioner(s)

Versus

Collector of Central Excise & Ors Respondent

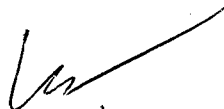
Mr.A.I.Bhatkar Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(U.C.SRIVASTAVA)

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.17/88

C.G.Dabke,  
C/o.Mr.T.R.Talpade,  
Advocate,  
Narottam Niwas,  
308, Jawaji Dadaji Road,  
Nana Chowk,  
Bombay - 400 007.

.. Applicant

vs.

1. Collector of  
Central Excise,  
P.M.C.Building,  
Tilak Marg,  
Pune.
2. Deputy Collector(P&E),  
Central Excise Collectorate,  
Bombay II,  
Piramal Chambers,  
Lal Baugh,  
Bombay - 400 012.
3. Union of India  
through  
The Secretary,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,Vice-Chairman

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.M.S.Ramamurthy  
Advocate for the  
applicant.
2. Mr.A.I.Bhatkar  
Advocate for the  
Respondents.

ORAL JUDGMENT:

Date: 25-6-1991

(Per U.C.Srivastava,Vice-Chairman)

The applicant has moved this Tribunal against his non selection as UDC even though he was within the zone of consideration inasmuch as the qualifying service of seven years has already <sup>been</sup> reduced to four years yet he was not considered and according to him juniors who joined the service later on as LDC were considered and promoted.

2. The applicant's father was working as Superintendent,Central Excise. While on service he died on 21st February,1982. Accordingly on compassionate

ground the applicant was given appointment.

The applicant in pursuance of the same joined on 31st August, 1982 though the file indicates that the order of his appointment was passed on 3rd August, 1982.

3. A seniority list was published on 1st January, 1985 of the LDCs working in the Central Excise Department of the different Collectorates by Respondent No.1 who is the cadre controlling authority and the applicant was shown junior to those who were selected by the Staff Selection Commission on dates later than 31st August, 1982 when the applicant had already entered the service. The applicant made a representation against the same and it was during this period he drew the attention of the authorities to the circular dated 16-9-1985 in which the qualifying service for the LDCs being promoted to UDCs were reduced from seven years to 4 years for a limited period of one year from the date of issue of the said letter. He requested that he has completed four years of service and he should be promoted as UDC.

4. A reply was given to the applicant in which he was told that his seniority was correctly fixed. From the reply given by the respondents it appears that the selection by the Staff Selection Commission took place in the year 1980 and panel was drawn. But their selection was communicated vide letter dated 18.12.1981. It was intimated that 27 persons have been so selected for the post of LDC and the panel was accordingly constituted. Obviously this panel was constituted before the appointment of the applicant. But they joined service after 31st August, 1982 and 14th September, 1982. It is on this ~~xxxxxx~~ basis the applicant claims himself to be senior.

5. The applicant was appointed on compassionate ground for which a circular was issued by the central government. In the matter of the seniority vis-a-vis a person who has been appointed on compassionate ground or direct appointee or those who come through Employment Exchange also engaged the attention of the central government which issued a circular in this behalf on 18th August, 1973 which is filed by the applicant. The said circular provides that the persons appointed as a result of an earlier selection will be senior to those appointed as a result of subsequent selection and so far as the appointment on compassionate ground is concerned, the date of selection would be the date on which the competent authority passes an order on the file taking a decision to appoint him. In the case of persons who are appointed from the list furnished by the Employment Exchange the date of preparation of the merit panel would be the date of selection. As the applicant's ~~xx~~ date of selection is 3rd August, 1982 the selection of other persons which took place earlier i.e. in the month of December, 1981 consequently the other persons <sup>as per the</sup> ~~under~~ the said circular would be deemed to be senior to the applicant.


6. Shri Ramamurthy, learned counsel for the applicant, attacked the said circular on the ground of arbitrary and gross injustice. There is no arbitrariness in the said circular as the said circular clarifies the question of seniority between those who come without undergoing the process of any DPC or without any competitive examination or <sup>without</sup> Employment Exchange but only on the ground of compassionate ground for which the ~~xxxxxxxxxxxxxx~~ government has issued a circular. May be because it <sup>is</sup> ~~a~~ welfare state. The circular issued by the government obviously though determined the seniority is also issued ~~xxxx xxx~~ under the executive


powers of Article 162 of the Constitution of India and the same cannot be said to be arbitrary or unreasonable.

7. It was again contended that the applicant was also within the zone of consideration yet he was not considered and persons like G. Raymond who was not within the zone of consideration was considered and promoted. The minutes of the departmental promotion committee meeting which was held on 21st August, 1986 has been produced before us. On that date neither the applicant nor ~~xxx~~ G. Raymond were within the zone of consideration because none of them had completed four years of ~~xxxx~~ qualifying service. Raymond completed four years of qualifying service in the month of September, 1986. It appears that no principle was followed in making the appointment. In case any relaxation would have <sup>been</sup> given to G. Raymond the same relaxation should have <sup>be</sup> been given to the applicant also. Obviously grant of relaxation was not possible as it was the government alone who could have given relaxation as it has already reduced the period from seven years to four years. This obviously vitiated the selection but in view of the fact that the selection as such had not been challenged the selection will not be upset but in view of the fact that these who were not qualified were considered there appears to be no reason why the applicant should not be considered.

8. Accordingly the respondents are directed to consider the case of the applicant on par with those who were considered for promotion to the post of UDC even though they have not completed four years of service for the 73 posts for which the DPC met. From the record it appears that about 400 candidates were considered but the applicant was ~~xx~~ excluded. It may be that out of 400 candidates many of them

were either not qualified at all or were junior to the applicant. As such taking into consideration the number of candidates who were to be considered in relation to the seats for which the appointment is to be made and in case the applicant comes within the zone let the Review DPC be assembled and the case of the applicant may also be considered in the light of what have been stated above. In case the applicant is selected the department may follow a reasonable course in considering him for future promotion in the light of the policy and practice which has <sup>been</sup> followed in the case of others. Let it be done within three months from the date of receipt of a copy of this order. This application is disposed of accordingly with no order as to costs.

  
(M.Y. PRIOLKAR)  
Member(A)

  
(U.C. SRIVASTAVA)  
Vice-Chairman