

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.186/86.

D.P.Parchure,
2nd Floor, Bldg No.3,
Ramanand Society,
Vile Parle (East),
Bombay - 400 057.

.. Applicant

Vs

1. Union of India
through
Secretary,
Central Board of Excise & Customs,
New Delhi.

2. Collector of Customs,
New Custom House,
Ballard Estate,
Bombay - 400 088.

.. Respondents.

Coram: Hon'ble Vice-Chairman B.C.Gadgil.

Hon'ble Member (A) J.G.Rajadhyaksha.

Appearances:

1. Mr.Mulik
Advocate for the applicant.
2. Mr.J.D.Desai (for Mr.M.I.Sethna)
for the respondents.

ORAL JUDGMENT

Date: 18-11-1987.

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

1. The applicant who was working as Office Superintendent in the establishment and administrative branch of the office of Collector of Customs, Bombay has challenged an order of penalty dtd. 6-10-1983 whereunder his next increment was withheld. This order was preceded by a departmental enquiry. The applicant's appeal was dismissed on 13-7-1984 and his memorial to the President was also rejected. The said rejection was conveyed to the applicant by a communication dated 1-7-1985.

2. A list of eligible Preventive Officers (Ordinary Grade) was to be prepared for considering them for promotion to the post of Preventive Officers (Selection Grade). That list was to be submitted to the DPC. One Shri D'Souza who

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was an UDC prepared that list and it went to the Asstt. Collector through the applicant. There were three persons bearing the same surname "Bhalerao" who had been included in the list. Two of these Bhaleraos belonged to the SC, while the third Bhalerao was from the General Category. D'Souza while preparing the list committed a mistake by mentioning the general category Bhalerao as belonging to SC. Similarly, one of the scheduled caste Bhaleraos had been shown as a general category candidate. In due course the Departmental Promotion Committee considered these candidates and Bhalerao who was from the general category was selected and promoted to the post reserved for scheduled caste on account of this mistake. It appears that this mistake came to the notice of the authorities withⁱⁿ a short period (of 3/4 months) and the order was corrected viz. the Bhalerao who really belonged to the SC was promoted and the Bhalerao from general category was^{said} reverted. The excess pay and allowances paid to the^{said} general category Bhalerao was recovered from him and it has been paid to the eligible Bhalerao belonging to the SC. In the disciplinary proceedings, it was alleged that the applicant was negligent inasmuch as he failed to verify the list that was prepared by D'Souza and that this negligence constituted a misconduct. The Disciplinary Authority held that the applicant was guilty of such misconduct.

3. Mr. Mulik for the applicant frankly stated that there did exist a mistake in that list prepared by D'Souza. He, however, contended that the real person responsible for the mistake was D'Souza as ~~that~~ it can as well be said that he was negligent while mentioning a general category Bhalerao as a SC candidate. According to Mr. Mulik, the applicant in his capacity as Office Supdt. is not expected


to re-verify and recheck every document or every list prepared by subordinates. In our opinion this submission would be too general to be accepted. However, it will not be possible to forget the peculiar circumstances in this case. The fact that there were in all three Bhaleraos to be included in the list is an important factor. It is common ground that only two Bhaleraos belonged to that category ^{of the Scheduled Caste} and the list did contain two Bhaleraos who were shown as belonging to that category. There is much substance in the contention of Mr. Mulik that the applicant bonafide relied upon the list prepared by D'Souza wherein two of them have been shown as belonging to SC. In our opinion in the peculiar facts and circumstances of the case, it would be very difficult to hold that the applicant was negligent in not reverifying the entire list on the basis of the original record. The applicant, in the peculiar facts of the case cannot be blamed if he relied upon the list prepared by D'Souza and forwarded it to the Asstt. Collector. Under these circumstances it will not be possible to hold that the applicant was guilty of any misconduct. The impugned orders dated 6-10-1983 as also the appellate order and the Presidential decision are therefore liable to be quashed. Of course, it is not at all our intention to suggest that every mistake or act of negligence deserves to be ignored or treated ^{lightly} ~~lightly~~. But in the peculiar circumstances of this case, where there is a lot of scope for confusion, such a mistake as is committed by the applicant need not, in our view, be visited with penalty of the type inflicted here.

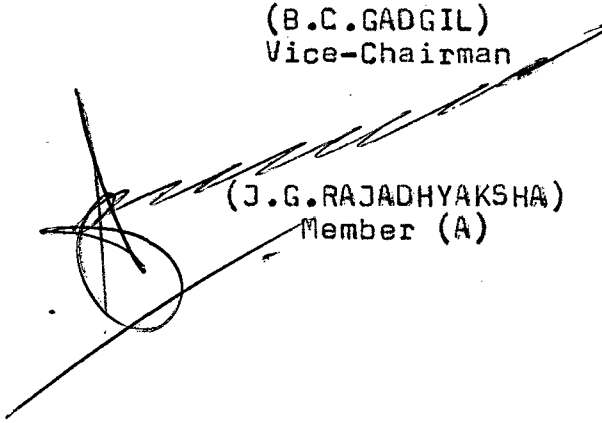
4. The next promotional post from the post of O.S. is that of Administrative Officer. It was contended by Mr. Mulik that the applicant was not promoted to that post of Administrative Officer in view of the penalty in question.

If that would be the position it would be necessary to pass appropriate orders in that respect also.

5. The application succeeds. The impugned order dated 6-10-1983 imposing the penalty as also the appellate order dtd. 13-7-1984 and the Presidential decision conveyed on 1-7-1985, are set aside. The applicant is exonerated of the charges levelled against him. Consequently, the next increment that accrued on 1-10-1984 should be released in favour of the applicant. In addition it is directed that if any DPC was held between the period 6-10-1983 and 13-7-1984 for considering promotion to the post of Administrative Officer and if the applicant has not been considered for that post on account of the above mentioned penalty that he was undergoing, a fresh Review DPC should be held which should consider the suitability or otherwise of the applicant for the post of Administrative Officer after ignoring the punishment dated 6-10-1983 which is now quashed by us, and if found suitable he should be given notional promotion and necessary monetary benefits arising thereby from the due date. It is needless to say that the pension and other retirement benefits will have to be revised on the basis of this order.

6. Parties to bear their own costs.


(B.C. GADGIL)
Vice-Chairman


(J.G. RAJADHYAKSHA)
Member (A)