

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.371 of 1986.

Smt.Ammmini George,
C/O. Shri T.K.George,
101, Neo Lokhandwala Building,
C.S.T.Road, Kalina,
Bombay.

.. Applicant

Vs

1. The President of India,
through the Secretary,
Central Board of Excise & Customs,
Ministry of Finance (Department of Revenue),
North Block, New Delhi-110 001.
2. The Collector of Customs & Central Excise,
Goa,
P.O.Box No.139,
Panaji - Goa.

Coram: Hon'ble Member (J) M.B.Mujumdar

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

Oral Judgement (Per M.B.Mujumdar) Dated 5th December, 1986.

Heard Mr.Hari Krishna Maingi, learned Advocate
for the applicant and read the application and documents.

The applicant was appointed as Preventive Officer Grade II in the year 1964 and she was promoted to Preventive Officer Grade I (Ordinary) in the year 1970. In the year 1970, her superior one Mr.Pendharkar passed an adverse remark by way of 'special report' and that adverse remark was as follows.

"Smt.P.C.Ammmini George has not been able to shoulder higher responsibilities attached to the Post of Preventive Officer Grade I. She had also not been found to be a willing worker."

According to the applicant, that adverse remark was passed by Mr.Pendharkar out of some grudge against her. She made a representation to the superior authority against that

...:2

adverse remark and the superior officer i.e. the Collector of Customs and Central Excise, Panaji-Goa expunged the adverse remark partly. Thus, the adverse remark: "She has not been able to shoulder higher responsibilities attached to the post of Preventive Officer Grade I" was expunged. However, the remaining part i.e. "She has not been found to be a willing worker" was retained.

According to the applicant, in view of the adverse remark, she was not recommended to be confirmed as Preventive Officer Grade I by the Departmental Promotion Committee's meeting held in the year 1972. However, after the adverse remark was partly expunged, she was confirmed in that post after the Departmental Promotion Committee's meeting held in 1973 recommended her.

The main grievance of the applicant is that she should have been favourably considered for confirmation by the D.P.C's meeting held in 1972, because the adverse remark passed by Mr.Pendharkar was partly expunged. She made a representation to the superior authority against this non-confirmation in the year 1972. That representation was turned down on 15.11.73. Again, on 24.11.80, she made a representation to the higher authority. That was also rejected on 3.11.1981. There is nothing to show that she made any representations during the period from 1973 to 1980. But again on 16.1.1981, she made a representation to the President. That was also rejected on 26.10.82. It is attached as Exhibit 'I' to the application.

It is clear that the applicant's grievance is against non-confirmation after the meeting of the Departmental Promotion Committee held in the year 1972. According to her, she was confirmed on the recommendation of the Departmental Promotion Committee in the year 1973 but she should have been

confirmed with retrospective effect from 1972. We are told that at least 5 or 6 persons have superseded her.

We have heard Mr. Maingi, the learned Advocate for the applicant at length on the point of admission and limitation. On merit, *prima facie*, we do not think that the applicant has a good case. The adverse remark passed by Mr. Pendharkar was not fully expunged by the Collector of Customs and Central Excise. It was only partly expunged. Even if the other part which was retained would have been considered by the Departmental Promotion Committee Meeting held in the year 1972, we are doubtful whether the applicant could have been recommended by the D.P.C. and confirmed. After all, it was in the discretion of the D.P.C. after considering her service record and the performance of other candidates. Hence, on merit, we do not feel that the applicant is having a good case.

Regarding the limitation, the applicant has ~~still~~ ^{at} worst case. As already pointed out, her grievance is that she was not confirmed and hence superseded by some juniors in the year 1972. She made a representation against that but, it was turned down on 15.11.73. There is no record to show as to what steps she took thereafter till 1980. The representation made by her in 1980 was rejected in 1981. She made another representation to the President on 16.7.81 but it was also rejected on 26.10.1982. Section 21 of the Administrative Tribunal's Act reads as follows.

" (1) A Tribunal shall not admit an application,-
(a) In a case where a final order such as is mentioned in clause (a) of Sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within

one year from the date on which such final order has been made;

b) In a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

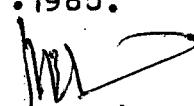
(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and
(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

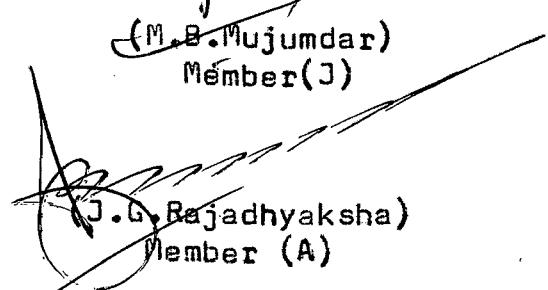
The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a) or as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months

specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

While construing the above provisions, the Principal Bench of the Tribunal at Delhi has held in B.K.Mehra Vs The Secretary, A.T.R.1986 CAT 203, that the Act does not vest any power or authority to take cognisance of the grievance arising out of an order made prior to 1.11.1982 and in such a case there is no question of condoning delay in filing petitions. In Surender Mishra Vs Union of India, ATR, 1982, C.A.T.372, Calcutta Bench of the Tribunal has held in another context that making abortive representations cannot be taken as valid ground for condonation of delay. In the present case, the grievance of the applicant is against her non-confirmation in 1972. After her first representation was turned down in 1973, she could have approached proper Civil Court or High Court for redressal of her grievance. By constituting this Tribunal only the forum for redressal of grievances is changed. We, therefore, feel that the applicant is not having a good case which should be adjudicated upon by this Tribunal. Her application is barred by limitation also. Hence, we summarily reject the application under Section 19(3) read with Section 21 of the C.A.T.1985.


(M.B. Mujumdar)
Member (J)


(J.G. Rajadhyaksha)
Member (A)