

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

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O.A. No. 5 of
T.A. No. xxx

1986
xxx

DATE OF DECISION 9-9-1987

Vasant R. Mulick

Petitioner

Applicant in person

Advocate for the Petitioner

Versus

Deputy Secretary, Min. of Finance Respondent

Mr. J. D. Desai (for Mr. M. I. Sethna) Advocate for the Respondent

CORAM :

The Hon'ble Mr. J. G. Rajadhyaaksha, Member (A)

The Hon'ble Mr. M. B. Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

MGIPRRND-12 CAT/36-3-12-86-15,000

If V.C. is required for the above, that may be obtained.

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A. 5/86

Vasant R. Mulick,
Assistant Collector of Customs(Retd.),
128, Juhu Prabhat, New D.N.Nagar,
Andheri(W),
BOMBAY - 400058.

... Applicant

vs.

1. Deputy Secretary,
Ministry of Finance
(Dept. of Revenue)
Govt. of India,
NEW DELHI.

... Respondent

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

Appearances:

1. Applicant in person.
2. Mr.J.D.Desai(for Mr.
M.I.Sethna)counsel
for the Respondent.

ORAL JUDGMENT

Date: 9-9-1987

(Per M.B.Mujumdar, Member(J)

The applicant, V.R.Mulick, has filed this application under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant joined the Customs Department as an Examiner in July, 1946. He was promoted as Appraiser in May, 1951, and as Asstt. Collector on an ad hoc basis in the Indian Customs and Central Excise Service in June, 1976. It is a Group 'A' service and has two scales, the Junior scale being Rs.700 - Rs.1,300 and the Senior scale being Rs.1,100 - Rs.1,600. We may point out that the applicant was promoted as Assistant Collector on ad hoc basis by the DPC held in 1976. The DPC was to be held every year but it was not held in 1977. The next DPC was held in July/August, 1978.

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The DPC took into consideration the vacancies that arose in the year 1977 and 1978 and prepared a panel of 31 officers. In that panel the name of the applicant was at Sr.No.1. In pursuance thereof, the applicant was regularised w.e.f. August, 1978. He retired at the end of April, 1981. It is the case of the applicant that according to the Respondents he could not be given senior scale because he had not completed three years' regular service in the junior scale before his retirement. It is further the case of the applicant that if the DPC would have been held in 1977, according to rules, he would have been regularised by that DPC and in that case he would have completed three years service in Jr. scale and would have got senior scale prior to his retirement, which would have consequently benefitted him in pay as well as pensionary benefits.

3. The respondents have resisted the application by filing the affidavit of Shri G.V. Subramanian, Under Secretary in the Ministry of Finance, Department of Revenue. The respondents have also produced a copy of the telex message received by them from the department yesterday. The respondents have admitted that the DPC was held in June, 1976 but the DPC could not be held in 1977 because the UPSC was insisting on finalisation of recruitment rules. According to the respondents, even if the DPC was held in 1977 it would have been sometime in June or July, 1977 and in that case the applicant would not have been promoted on a regular basis before July or August, 1977 and he would not have completed the requisite for years' service in Junior Scale before his retirement on superannuation in April, 1981. It is further pointed out that senior scale was admissible only after completion of four years of regular service in Junior scale, but as many as 40 direct recruits of

1978 and 1979 and four promotees of 1978 who were senior to the applicant did not become eligible before the retirement of the applicant in 1981, the applicant also might not have been entitled to the Senior scale prior to his retirement.

4. In this respect we may point out that it was not disputed before us that it was necessary for the respondents to hold the DPC every year. The DPC could not be held in 1977 for no fault of the applicant. Moreover the DPC held in July and August, 1978 prepared a panel of 31 officers taking into consideration the vacancies for the years 1977 and 1978. We are of the view that according to the rules the DPC should have clearly prepared that panel into two groups: the first against the vacancies in 1977 and the second against the vacancies in 1978. At this stage we do not think it necessary to direct that a review DPC should be held for that purpose because even taking into consideration the panel as it is and the fact that the applicant is placed at Sr.No.1 in that panel, we think that even if the DPC had prepared a separate panel for 1977, the applicant would still have been at Sr.No.1 in that panel. We are, therefore, inclined to give a declaration that the applicant should be deemed to have been regularised as Asstt. Collector in the Junior scale w.e.f. 1st of July, 1977.

5. Even if we grant a declaration as above, it will be for the respondents to decide after taking into consideration all the circumstances, as to whether the applicant was entitled to the Senior scale or not prior to his retirement. In this connection we were shown two circular letters dtd. 6th March, 1979 and 31st July, 1982. According to the applicant the former circular was issued on a

provisional basis while the later replaced it. According to the former circular, it was decided on a provisional basis to grant Senior scale in accordance with the concordance table prescribed in Department of Expenditure O.M. dtd. 14th November, 1975 to Group 'A' Officers of the Indian Customs and Central Excise Service (both direct Recruits and Promotees) with effect from the date they complete four years of regular service in the Junior scale after 1-1-1973. The respondents have relied on this circular to show that the applicant was not entitled to the senior scale as he was not completing four years regular service prior to his retirement in April, 1981; because even if the DPC would have been held in 1977 it would have promoted him on regular basis with effect from July/August, 1977. On the contrary, according to the applicant the second circular of 1982 being a final one it supercedes the former. We may point out that according to the later circular dtd. 31st July, 1982 a minimum of three years' regular service (other than service rendered on provisional or ad hoc basis) in the Junior scale was necessary for entitling an officer to get the Senior scale. It is not necessary for us to decide by which circular the applicant would be governed in spite of the declaration given by us. We may further point out that according to the circular dtd. 31st July, 1982 in case a senior officer has not completed three years' qualifying period his juniors will have to wait for promotion to the senior scale till the senior has completed the eligibility period. For want of necessary data we are unable to decide whether the applicant was entitled to get the senior scale prior to his retirement even on the basis that he was regularised with effect from 1st of July, 1977. Hence we propose to leave all these procedural details to the respondents.

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6. With this we pass the following order:

O R D E R

(i) It is hereby declared that the applicant should be deemed to have been regularised as Assistant Collector (Junior scale) w.e.f. 1st of July, 1977;

(ii) The respondents shall give the Senior scale of Rs.1,100 - Rs.1,600 to the applicant provided he was otherwise entitled to the same according to the rules prior to his retirement;

(iii) Parties to bear their own costs.

(J.S. RAJADHYAKSHA)
Member(A)

(M.B. MUJUMDAR)
Member(J)