

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 537/89

~~Trans Fax App No: XXX XXX~~

DATE OF DECISION: 9.8.94

V.R.MOLICK Petitioner

Advocate for the Petitioners

Versus

U.O.I. & Ors. Respondent


Mr.P.M. Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri V. Ramakrishnan, Member(A)

1. To be referred to the Reporter or not ? *ND.*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *ND.*


Vice Chairman

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. NO. 537/89

V.R. MALICK

..APPLICANT

V/s.

Union of India & Ors.

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.
Hon.Shri V. Ramakrishnan, Member(A)

ORAL JUDGMENT:
(Per: M.S.Deshpande, Vice Chairman)

DATED: 9.8.94

Heard the applicant, present in person and Shri P M Pradhan, learned counsel for the respondents.

2. The applicant seeks a declaration that he was eligible to draw senior scale of pay from the date he completed 3 years service in the junior scale i.e., from 1.7.1980 and consequential refixation of his salary with retirement benefits.

3. It is not necessary to mention the entire service particulars of the applicant for the purpose of this order. The applicant joined the Customs Department as an Examiner in July 1946. He was promoted as Appraiser in May 1951 and as Assistant Collector on ad hoc basis in June 1976. By the order passed in OA No.5/86 decided by this Tribunal on 9th September 1987 a declaration was granted that he should have been deemed to have been Assistant Collector from 1.7.1977. Though other reliefs were also claimed the Tribunal ^{did not consider them} ~~took the view~~ in the absence of necessary data.

4. By the circular dated 6.3.1979, Annexure C, in supersession of all the previous instructions it was decided to grant on a provisional basis senior scale in accordance with the Concordance Table prescribed

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by the Department of Expenditure OM dated 14.11.1975 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 regular service in the junior scale after 1.1.1973. The applicant retired on April 30, 1981. The circular dated 31.7.1982, Annexure D to the application, was issued ^{and it} which prescribes certain conditions for determining the eligibility of the officers for consideration for promotion to senior scale and one of them was that a minimum of three years regular service in the junior cadre. It also provided ^{that} as a number of vacancies in the senior scale arose from different dates from 1.1.1973 onwards the promotions will be made retrospectively against such vacancies as and when they arose. For deemed retrospective promotion the direct recruits who passed passed the departmental examination will be candidates in the order of that seniority irrespective of the date of their passing the examination. In case a senior officer has not completed three years qualifying period, his juniors will have to wait for his promotion to the senior scale till the senior has completed the eligibility period. Though a plea was raised in the written statement based on the last mentioned condition, the learned counsel for the respondents stated that he was not in a position to substantiate the argument by producing the record as it could not be traced. We find that since the applicant got a declaration in the earlier petition that he should be deemed to have been in the junior scale from 1.7.1977 the position which the direct recruits held would not be relevant to the claim which the applicant is making.

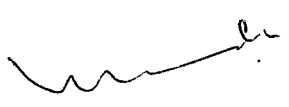
5. It was urged on behalf of respondents that the circular dated 31.7.82 would not apply to the applicant's case because the applicant had retired on 30.4.1981. The circular dated 31.7.82 itself makes a reference to its retrospective operation and as we had pointed out since a number of vacancies in the senior scale arose from different dates from 1.1.1973 onwards the promotions would be made retrospectively against such

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vacancies as and when they arose. The earlier letter dated 6.3.79 granted only on provisional basis certain benefits of pay fixation and the letter dated 31.7.82 brought a finality to the position. The condition of four years was reduced to three years and this will apply to the applicant's case also though he had retired on 30.4.81 i.e., prior to the issuance of the circular dated 31.7.82. The applicant would, therefore, be entitled to have his position considered on the basis that he would be entitled to the senior scale if he had completed three years of service on 30.6.1980 i.e., prior to his retirement.

6. Shri Pradhan, learned counsel for the respondents stated that even if the claim of the applicant is accepted he would not straight away get the senior scale because in view of Clause (3) of the circular dated 31.7.82 it has also been decided that the promotion of the officers Indian Customs and Central Excise Service Group 'A' from the junior to the senior scale will be made on the basis of seniority-cum-fitness. The suitability of the applicant, therefore, will have to be adjudged on the basis of seniority-cum-fitness and the matter shall have to go to a Review DPC for ascertaining whether the applicant on the standards laid down was entitled to be promoted to the senior scale in view of his fulfilling the condition that he has completed the requisite number of years of service on 30.6.1980.

7. We, therefore, direct the respondents to hold the review DPC and consider whether the applicant was entitled to be placed in the senior scale on the basis of the criteria laid down. The Review DPC will have to proceed on the basis that the applicant had put in the requisite number of years of service which was a condition precedent for this assessment. The Review DPC shall be held within three months from the date of communication of ~~a copy of~~ this order and if the



applicant is found suitable to be promoted to the senior scale he shall be paid all the arrears and retiral benefits within two months thereof. With these directions the OA is disposed of with no order as to costs.



(V. Ramakrishnan)
Member(A)



(M.S. Deshpande)
Vice Chairman