

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 245/89

Transfer Application No:

DATE OF DECISION: 10/11/94

Shri G.P.Sardeshmukh & Anr. Petitioner

Shri D.V.Gangal Advocate for the Petitioners

Versus

Union of India & Ors. Respondent


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

CORAM :

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

The Hon'ble Shri P.P.Srivastava, Member (A)

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


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 245/89

Shri Gajanan Purushottam Sardeshmukh & Anr... Applicant
V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri D.V.Gangal
Advocate
for the Applicant

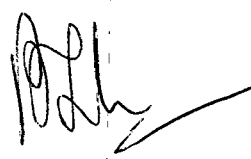
Shri P.M.Pradhan
Advocate
for the Respondents

JUDGEMENT

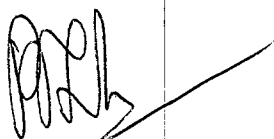
Dated: 10/11/94

(PER: P.P.Srivastava, Member (A))

There are two applicants in this case. Shri G.P.Sardeshmukh as Applicant No. 1 and Shri S.N.Bashikar as Applicant No. 2. The applicants were working in Central Excise Department and were appointed as Inspectors on 16.10.1973 and 31.12.1973 respectively. The applicants were promoted to the grade of Inspectors, Central Excise and Customs (Senior Grade) in the pay scale of Rs.550-900 vide order dated 18.7.1986 (Annexure-'A'). Their pay fixation was done according to the rules as per Annexure-'C' and 'C-1' respectively. They got fixation of pay at Rs.625/- from 18.7.1986 to 30.9.1986 and at the rate of Rs.675/- from 1.10.1986 to 30.6.1987 and second applicant got at the rate of Rs.625/- from 18.7.1986 and at the rate of Rs.675/- from 1.1.1987. Prior to these promotions the applicants were getting pay at the rate of Rs.620/- in the scale of Rs.425-800 as ordinary grade Inspectors.



2. After the IVth Pay Commission's recommendations were accepted the grade of the Inspectors Central Excise Ordinary Grade and Senior Grade in two scales viz. Rs.425-800 and Rs.550-900 were merged into one grade and new grade of Rs.1640-2900 was introduced w.e.f. 1.1.1986. The recommendations of the IVth Pay Commission were accepted on 13.9.1986 and the applicants were given option to opt for new scale from the dates suitable to them and the applicants opted for the revised pay scale w.e.f. 1.10.1986 and 1.1.1987 respectively. The applicants' case is that while fixing their pay at Rs.1880/- the respondents have ignored the officiating pay being drawn by them in the scale of Rs.550-900 (Senior Grade). The applicants have submitted numerous representations against fixation orders of the respondents but the respondents have not considered their case. The representations of the applicants had been rejected by the respondents vide their letter dated 25.1.1988 (Annexure-'F'). The applicants further state that respondents have issued orders on 3.3.1988 promoting 68 Inspectors (Ordinary Grade) as Inspectors (Senior Grade) in the pay scale of Rs. 550-900. By the same order the respondents have also cancelled the promotion orders of the applicant which were issued on 18.7.1986 (placed at Annexure-'A'). Aggrieved by the order placed at Annexure-'D' the applicants have approached the Tribunal for quashing Annexure-'D' and restoring their promotion placed at Annexure-'A' and have prayed that they may be declared as Inspectors (Senior Grade) w.e.f. 18.7.1986 and their pay be declared at the rate of Rs.2000/- p.m. w.e.f. 1.10.1986 and 1.1.1987 respectively and that they may be paid arrears consequent to these orders.



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3. The respondents have brought out in their reply that the post of Inspector (Senior Grade) stood abelished as per the IVth Pay Commission's Report and one integrated scale for Inspectors came into effect from 1.1.1986. It was clarified by the Central Board of Excise and Customs vide Annexure 'R-1' that promotions can be made retrospectively against the Selection Grade vacancies available upto 31.12.1985. The respondents have further brought out that as the Selection Grade ceased to have in existence (which would arise) on or after 1.1.1986. Accordingly, the respondents calculated the vacancies in Senior Grade upto 31.12.1985 and issued promotion orders vide Annexure-'R-3' which is also Annexure-'D'. The respondents have stated that there were 80 vacancies out of which 12 vacancies were kept reserved for the candidates who were involved in the sealed cover procedure and the names of 68 officers were published. Out of these 68 officers 57 officers from the panel of 1985 DPC and 11 officers from the panel of 1986 DPC were accomodated against vacancies available upto 31.12.1985. Since the applicants were junior to these 68 persons who were promoted, their names could not appear in the combined panel prepared by the DPC. Since the Grades have merged from 1.1.1986 onwards and the senior grades are not in existence after 1.1.1986, the applicants have no claim for fixation of pay in that grade after 1.1.1986 and that they have been correctly fixed at Rs.1880/- w.e.f. 1.10.1986 and 1.1.1987 respectively.

4. We have heard both the counsels. The question which was raised by the counsel for the applicant was that in the promotion orders placed at Annexure-'D'/Annexure 'R-3' 12 vacancies have been kept aside and orders for these vacancies have not been issued and since applicants had already been promoted before the IVth Pay Commission's recommendations, the process of filling these vacancies should be completed

and the applicants accommodated against those vacancies as they are seniors and were already promoted. Since the position of these 12 posts was not clear from the available records, the respondents were directed to submit an affidavit giving details as to what has been done about completing the procedure for filling these 12 vacancies. The applicants have brought out the details that the cases of S/Shri A.J.Khatrī, M.J.Kulkarni, R.J. Gaikwad, C.A.Badlani, V.P.Jagtap, G.D.Bapat, S.R.Kanade, R.G.Bangadi, A.R.Jamdagni, J.N.Sawant (SC) and V.M.Shinde (SC). The applicants have further stated in their affidavit that the cases of 5 officers S/Shri V.S.Patankar, N.K.Lalge, A.R.Darudwale, V.K.Kulkarni and S.S.Kunde (S.T.) could not be considered as their C.C.Rolls were not available and these are senior to applicants and their cases are required to be considered against the 12 posts.

In para 4 of the affidavit the applicants have given the detailed position of the various officials who are required to be considered and or who are considered against the 12 reserved posts. Para 4 reads as under :-

" 4. I say that from the above statement, it would be clear that out of the 12 posts reserved, two officers viz., Shri N.K.Lalge and Shri V.K. Kulkarni are already promoted to Selection Grade. Out of the remaining 10 posts reserved, the following officers would be promoted shortly viz., Shri M.J. Kulkarni, Shri C.A.Badlani and Shri V.S.Patankar. As vigilance cases are still pending against two officers viz., Shri V.M. Shinde (SC) and Shri S.S. Kunde (ST), the said posts will have to be kept vacant. Thus there will be only 5 posts remaining vacant. As against these posts, the following officers have been promoted to selection grade in terms of the order passed by the Hon'ble Tribunal and the said persons are senior to the applicant themselves. I say that the said officers who have been promoted are as follows :-

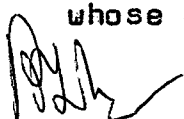
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Shri P.S.Puri, Shri K.K.Patlur, Shri H.R. Kanbargi, Shri P.P.Deshpande, Shri L.Y.San, Shri V.H.Jadhav and Shri A.D.Deshpande. I say that the cases of the following officers are under consideration for promotion to Selection Grade as they have been exonerated in disciplinary proceedings who are also senior to the applicants and the said persons are : Shri H.S.Wadkar, Shri S.V. Behare, and Shri V.V. Gorhe. I say that the said case of Shri V.D. Taralgatti is under consideration in terms of order of the Hon'ble Tribunal. I say that from the above position, it would be clear that there are no vacant posts in the Selection Grade to which the applicants can be adjusted."

5. The applicants have not disputed the number of vacancies which were available on 31.12.1985. However, they have shown anxiety that even after so many years the filling up of 12 vacancies have not been completed. The applicants have also mentioned that six officers whose case is pending for long time should not be considered against vacancies which have become available on 31.12.1985.

6. There is no dispute that all the persons whose names have been given in Para 4 of the affidavit are seniors to the applicants. From the table which has been given on 31.10.1994, it is seen that there are two officers of 1978 batch and two officers of 1982 batch and three officers of 1983 batch and six officers of 1985 batch whose cases are under consideration or have been considered for promotion after the promotion order at Annexure-'D'/Annexure-'R-3' were issued.


7. After hearing both the counsels and seeing the record, we have come to the conclusion that the respondents have correctly issued the orders at Annexure-'D'/Annexure-'R-3' promoting 68 officers. In this order 12 vacancies were kept reserved for sealed cover cases. On scrutiny it has been brought out by the respondents that there are 16 officers whose cases are under consideration who are senior to the



present applicants. In these circumstances, we do not see any merit in the claims of the applicants and at present they do not have a case for being considered for promotion to the Senior Grade against the vacancies which arose upto 31.12.1985. We, however, direct the respondents to finalise the cases of senior officers ^{within a period of six months} expeditiously ^{to} fill in the 12 vacancies which are still unfilled. Needless to say that the case of the applicants should also be considered according to their seniority if all the 12 vacancies are not filled by the senior officers to the applicants. The OA. is disposed of with the above directions.



(P.P.SRIVASTAVA)
MEMBER (A)



(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.