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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 138/89

Transfer Application No:

DATE OF DECISION: 30.6.1994

M.K.V.Gopalan.

_____ Petitioner

Shri M.S.Ramamurthy.

_____ Advocate for the Petitioners

Versus

Union of India & Ors.

-----Respondent

Shri A.I.Bhatkar for Official Respondents

Shri G.S.Walia for R-3.

_____ Advocate for the Respondent(s)

CORAM :

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

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

1. To be referred to the Reporter or not ? *no*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *no*


(M.S.DESHPANDE)
VICE-CHAIRMAN

(R)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.138/89.

M.K.V.Gopalan. ... Applicant.

V/s.

Collector of Customs & Others. ... Respondents.

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

Appearances:-

Applicant by Shri M.S.Ramamurthy,
Official Respondents by Shri A.I.Bhatkar,
Respondent No.3 by Shri-G.S.walia.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 30.6.1994.

By this application the applicant claims to be promoted to the post of Supervisor in the New Custom House, Bombay w.e.f. 7.10.1988 together with consequential benefits including back wages and for repatriation of Respondent No.3 to his parent cadre on the expiry of his term of deputation with New Custom House, Bombay. The applicant, the Respondent No.3 were working as Operator (Telecommunication) originally and the Respondent No.3 was considered by the D.P.C. in the year 1985 for the post of Supervisor. He was not selected in that year, but came to be selected in 1986. In May, 1986 he was posted as Supervisor on the Central Excise side Bombay II Collectorate. The applicant was not eligible till 1988 and he was considered for the post of Supervisor by the DPC which was held in the year 1988 and became qualified for promotion on 7.10.1988. The Respondent No.3 was sent on deputation on 17.3.1988 to the Customs department for a period of six months (Ex. A-3) and it was mentioned in the order that the deputation period will be for six months or until the date when T.P. Operators of this Custom House become eligible for promotion whichever is earlier. This was done apparently on the basis of the order

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(13)

- 2 -

dt. 31.3.1986 issued by the Ministry of Finance,

Department of Revenue which may be extracted as follows:

"The question regarding administrative/cadre control over Group 'C' Tele-communication staff working in various Collectorates of Customs and Central Excise has been under consideration of the Government for quite some time. I am directed to say that in supersession of all the previous orders, Government have now decided that the Group 'C' Tele-communication staff would be borne on respective Collectorates cadres both for administrative and cadre control purposes. Further, they would be considered for promotion and confirmation within Group 'C' in their respective Collectorates."

Despite this order the Respondent No.3 came to be absorbed permanently by the order dt. 3.4.1990 which read that the Office Order No.86/88 dt. 17.3.1988 was withdrawn since Shri N.Damodaran is permanently absorbed in the Bombay Custom House as Supervisor (Telecommunication) w.e.f. 17.3.1988. This order was modified on 19.9.1991 by withdrawing the order dt. 17.3.1988 and by adding that this order would be subject to the outcome of the Stamp Application No.101/89 (the present OA) filed by the applicant in the CAT, New Bombay Bench. The interim order which came to be passed on 9.2.1989 was that if the Respondent No.3 was absorbed or made permanent as a Supervisor in the New Customs House, Bombay and that absorption or making him permanent would be subject to the final outcome of this case.

2. The contention on behalf of the Respondents was that the Respondent No.3 N.Damodaran was senior to the present applicant in the common seniority list prepared in the Central Excise and the Customs Department Operator Telecom on 17.12.1985, while the applicant figured at Sl. No.227 and Respondent No.3 figured at Sl.No.5. A Review DPC was held pursuant to the directions in OA No.16/86 decided on 20.3.1986 filed by Respondent No.3. On 27.1.1987 the Respondent No.3 N.Damodaran's name was directed to be interpolated after

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(14)

- 3 -

the name of Raja Ram in the select list that was prepared on 31.12.1985 with the result that the Respondent No.3 would stand at Sl. No.3A in that list.

3. The contention on behalf of the Respondent No.3 is that the effect of the selection of the Respondent No.3 on the basis of the Review DPC that was held, as stated in Swamy's - Seniority And Promotion Part VI Review DPCs in para 18.4.2 and 18.4.3, The consequence being that if the Officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the juniormost person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under FR 27 at the stage it would have reached, had he been promoted from the date of officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. The rule position in this respect has not been contested by Shri Ramamurthy, the learned counsel for the applicant. But according to him in view of the separation that was brought about by virtue of the directions dt. 31.3.1986 the Respondent No.3 would belong to the Excise Wing and could not have been inducted and absorbed in the Customs Wing, though such an official could have been sent on deputation to other department for a limited period. It was urged that after 31.3.1986 the Respondent No.3 could not have been absorbed in the Customs wing as he belongs to the Excise Wing because all the previous orders had been superseded. It is however, clear from the orders dt. 31.3.1986 that the orders were to operate prospectively and could not have any retrospective operation. We have already referred to the common

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seniority list which was drawn on 17.12.1985 which contained the names of the applicant and the Respondent No.3. In the application neither a challenge has been raised to the common seniority list which was drawn in the year 1985, nor was it contended that prior to the orders issued in 1986 the two wings were separate and therefore there could not have been a common seniority list. The learned counsel for the applicant, however, pointed that after the order of separation passed on 31.3.1986 the 1985 seniority list cannot have any bearing. He also urged that on 16.11.1988 an order for amalgamation of the two cadres was passed and was questioned in OA No.18/89 before the Tribunal, but on 3.1.1991 that move was withdrawn. Again OA No.12/93 was filed on 2.11.1993 questioning the amalgamation order and that is pending. What was in issue in these OAs obviously was the subsequent amalgamation orders which were passed and as the present petition stands there is no challenge to the situation that the position with regard to the seniority was as is reflected in the common seniority list of 1985.

4. Proceeding on this basis and the consequence of the Review DFC by which the Respondent No.3 came to be selected in the panel that was confirmed on 31.12.1985, it will have to be examined whether there was any bar to the applicant's posting in the Customs Department in view of the Government of India's Orders dt. 31.3.1986. The contention of Shri Walia, the learned counsel for the Respondent No.3 is that whatever vacancies existed either in the Customs or Excise Wing had to be filled on the basis of common seniority list and the result of the DFC, and that the different approach as directed in the orders dt. 31.3.1986 can be only in respect of the vacancies occurring after that date.

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5. Reliance was placed for this purpose on the observations in Y.V.Rangaiah and Ors. V/s. J.Sreenivasa Rao and Others (1983 Supreme Court Cases (L&S) 382).

In para 9 it was observed:

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

The learned counsel for the applicant tried to distinguish this decision with reference to the rules mentioned therein, but we (will) have no doubt that the principle would apply to the facts of the present case. The second decision is P.Ganeshwar Rao and Ors. V/s. State of Andhra Pradesh and Ors. (1989 Supreme Court Cases (L&S) 123. After referring to the special rules^{and} the principle enunciated in Y.V.Rangaiah and Ors. V/s. J.Sreenivasa Rao and Ors. ~~was mentioned~~ and it was held that the amendment made on 28.4.1980 did not apply to the vacancies which had arisen prior to the date of amendment.

6. There is no dispute before us that the DPC had before it one of the vacancies from the Bombay Custom House along with 10 other vacancies from the Excise to be filled in. The panel was prepared in respect of these 11 vacancies, It may be that the Respondent No.3 came to be promoted against the vacancy of one Johnson by the order dt. 16.5.1986, but that would not change the position in view of the Review DPC held

(16)

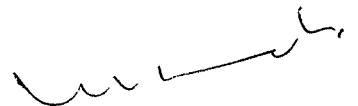
- 6 -

later. It was the right of the Official Respondent Nos.1, 2 and 4 to fill up the vacancies which occurred prior to 31.3.1986 on the basis of the rule position obtaining earlier and appoint Respondent No.3 in a vacancy which was available in the Bombay Custom House. No exception^{can}/therefore be taken to the appointment of the Respondent No.3. The initial mistake in sending the applicant on deputation only came to be corrected by the subsequent orders which came to be issued. They will not vitiate the appointment of Respondent No.3 in the Bombay Custom House.

7. In the result, we see no merit in the application. It is dismissed. There will be no order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(M.S. DESHPANDE)
VICE-CHAIRMAN

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