

(16)

CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 241/89

~~XXXXXX~~

198

DATE OF DECISION 25.6.1991

Mr. A.B.Awasthi

Petitioner

Mr. G.S.Walia

Advocate for the Petitioner (s)

Versus

Union of India & Ors.

Respondent

Mr. A.I.Bhatkar

Advocate for the Respondent (s)

## CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

  
( U.C.Srivastava )  
Vice-Chairman

17  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

\* \* \* \* \*

Original Application No. 241/89

Ajit B. Awasthi,  
Flat No. 10, Darbhanga House,  
E Block, Peddar Road,  
Bombay 400 026.

... Applicant

v/s

1. Secretary to Govt. of India,  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi 110001.

2. Collector of Customs,  
New Custom House,  
Ballard Pier,  
Bombay 400 038.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri U.C.Srivastava.  
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. G.S.Walia, Advocate  
for the applicant and  
Mr. A.I.Bhatkar, holding  
the brief of Mr.M.I.Sethna,  
Counsel for the respondents.

ORAL JUDGEMENT:

Dated : 25.6.1991

(Per. U.C.Srivastava, Vice-Chairman)

This is the second application filed by the applicant. The first application was directed against the suspension order and the Tribunal directed the respondents to complete the enquiry within the prescribed time. The applicant was a Custom Appraiser in the Custom Department. He was placed under suspension and the departmental proceedings against him started and ultimately he was exonerated vide order dated 21st September 1988 and it appears that the applicant was also considered by the Departmental Promotion Committee

to the post of Assistant Collector of Customs held in July 1986 as has been averred by him in his application the sealed cover pertaining to findings of DPC may be opened and he may be given the promotion as Assistant Collector of Customs with retrospective seniority and the Collector of Customs may be directed to allow the applicant to cross the Efficiency Bar with effect from 1.8.1980 and 1.8.1985. Certain miscellaneous applications were moved by the applicant for directing the respondents to allow him to cross the efficiency bar and granting him promotion.

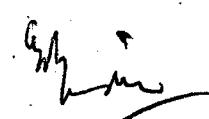
2. In the written statement which has been filed by the respondents it has been stated that the applicant has been promoted as Assistant Collector of Customs with effect from 13th October 1989. He claims promotion from the date when his juniors were promoted. According to the applicant some 18 persons junior to him have been promoted to the senior time scale. The applicant was considered for promotion to Assistant Collector of Customs as early as in 1986 and the 'Sealed Cover Procedure' was adopted because of certain departmental enquiry pending against him. It appears that the applicant was subsequently exonerated in the departmental enquiry and that he was promoted to the post of Assistant Collector of Customs with effect from 13.10.1989. After exoneration in the departmental enquiry the entire charges against the applicant stand wiped out and applicant should have been promoted to the post of Assistant Collector of Customs with effect from the date his juniors

were promoted. According to the respondents the promotion of 1.9.1986 was only on ad-hoc basis. May it be so, ad-hoc promotion also in certain circumstances can be counted for seniority and regularisation.

3. It is really the sad state of affairs that the department which sends its representatives to the Court are not posted with the facts of the case as today we have found that the departmental representatives themselves were not posted fully with the facts of the case and in future the department should send such representatives who are posted with the facts of the case.

4. We accordingly direct that as the applicant has been exonerated by the departmental enquiry he will be deemed to have been promoted from the date his juniors were promoted and in case the DPC of 1986 did not consider his case along with his juniors a review DPC may be convened within two weeks <sup>months</sup> which will consider his case and in case he is found suitable for promotion he may be given promotion from the date his juniors were promoted. The applicant will be entitled to all consequential benefits. With the above observations the application is disposed of. There will be no order as to costs.

5. A copy of the order may be sent to the Collector of Customs for necessary action.

  
( M.Y. Priolkar )  
Member (A)

  
( U.C. Srivastava )  
Vice-Chairman