

(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO: 424/89

495

T.A. NO: --

DATE OF DECISION 4-2-1992

S.V.Ramakrishnan

Petitioner

Shri Ramamurthi

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM:

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

The Hon'ble Mr. A.B.Gorthi, 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)  
(A.B.GORTHI)

mbm\*

(23)

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

Date of Order: 4/2/92

O.A. No. 424/89

S.V. Ramakrishnan

Applicant

versus

Union of India & others

Respondents.

Shri Ramamurthi Counsel for the applicant.

Shri P.M. Pradhan Counsel for Respondents.

**CORAM:**

Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon. Mr. A.B. Gorthi, Adm. Member.

(Per Hon. Mr. A.B. Gorthi, Adm. Member):

The applicant who belongs to the Indian Customs and Excise Services (I.C.E.S.), aggrieved by the improper fixation of his seniority and the rejection of his appeal, by the Government of India, (Respondent No. 1) has filed this application seeking relief by way of a direction from this Tribunal to the respondents to fix the applicant's inter/se seniority with effect from 1973 and to grant him consequential benefits.

2. The applicant joined I.C.E.S. in 1963 and was due for promotion to the post of Deputy Collector in 1973, but in that year, as the Departmental Promotion Committee (D.P.C.) that met, did not

approve him for promotion, although the applicant was not aware of anything adverse in his confidential reports. When the D.P.C. met in the next year, he was approved for promotion and it was given to him in 1975, but his grading being inferior to the others, who were approved alongwith him, some of his juniors were placed above him, in priority for promotion.

3. When the applicant was initially left out for promotion in 1973, he made a representation giving data of his professional achievements. The Collector of Customs and Central Excise, Cochin, who was asked by the Central Board of Excise and Customs, <sup>to</sup> verified the data furnished by the applicant, apparently gave a favourable reply and hence his case was <sup>and appeared to</sup> favourably considered by the 1974 D.P.C. The contention of the applicant is that he should be deemed to have been approved by the DPC in 1973 and his inter se seniority re-fixed accordingly.

4. The reasoning put forward by the applicant is that D.P.C. held in 1973 did not have the relevant <sup>data</sup> <sub>relating to</sub> the ~~training~~ to his professional achievements which were made available to the D.P.C. in 1974 on receipt of a communication from the Collector of Customs and Central Excise, Cochin which enabled 1974 D.P.C. to make

an objective assessment of the applicant's potential for promotion. Had the 1974 D.P.C. which graded him as 'good' acted as a Review D.P.C., as it should have, he would have been deemed to be approved by the 1973 D.P.C, thus, entitling him to his original seniority.

5. At the very outset the respondents objected to the application on the ground that it is barred by limitation, as the applicant is attempting to revive the seniority that he lost in 1973 by means of this application filed in 1989. The relief claimed by the applicant undoubtedly relates to fixation of his interse seniority with effect from 1973. However, it is seen that he had been persistently representing to the Government, though without success. His last representation dated 21.4.88 was said to have been carefully considered by the Government on 27.6.88 and rejected. We, therefore consider that it will be in the interest of justice if the application is considered by us on merits.

6. The respondents, in their reply, refuted

the applicant's contention and asserted <sup>accepted</sup> that there was nothing irregular in the proceedings of D.P.C. in 1973 which found the applicant as 'Not yet fit' for promotion. It had taken into consideration all the relevant Confidential Reports of the applicant and made due assessment of the applicant's fitness for promotion. If the applicant had been given the average reports, there was no requirement at all to communicate the same to him. Ministry of Home Affairs Office Memorandum dated 2.3.68 (Annexure -1 to the C.A.) on which reliance has been placed by the applicant to show that any fall in the standard of the officers was revealed through his Annual Confidential Reports, should be brought to <sup>his</sup> notice so that he is alerted in time, became redundant with the issuance of the said Ministry's Office Memorandum dated 6.3.68 which dispensed with the system of awarding gradings to the employees. In the absence of such gradation in the Confidential Reports, it became impracticable either to detect a fallen standard or to communicate the same to the official concerned in specific terms. This position stands sufficiently clarified in the Ministry's Office Memorandum dated 30.12.1983.

7. The respondents, however, admit that the applicant's representation <sup>and</sup> in the reply of Collector Cochin were placed in the Dossier of the applicant ,

that was sent to the 1974 D.P.C., but even then the applicant could only be graded 'good' whereas some of his juniors were 'Very good' <sup>graded and</sup> thus superseded him. The respondents denied that the applicant had any right to claim that on his representation, his case should have been considered by Review D.P.C. and that he should have been assigned his original seniority.

8. At the very outset it is seen that there was no complaint that the D.P.C. in 1973 acted malafide. The applicant stated that Smt. K. Narain joined as Collector at Cochin in 1971 and that in her very first report <sup>on</sup> of the applicant for the year 1971-72, she could not project his proficiency properly due to absence of a resume of the work done by him. Even <sup>her</sup> ~~had~~ the report for the next year 1972-73 was an improvement on the previous year's report. It was thus, vehemently contended on behalf of the applicant that in any case, the report of Shri G. Shankaran, Collector, Cochin on the applicant's representation <sup>is</sup> wiped out ~~with~~ the deficiencies in the applicant's Confidential reports which were put before the 1973 D.P.C. We are unable to accept such a plea. It would amount to introducing a new and unhealthy system of verification of one reporting officer's assessment by another subsequent reporting officer of the same rank and

level. The prerogative to agree or disagree with the reporting Officer's assessment <sup>and</sup> ought to modify it which belongs to the reviewing officer and officers superior in the chain of reporting. Shri G. Shankaran's report can, at best, be said to be an additional input which authorities concerned allowed to be placed before the D.P.C., on the representation of the applicant.

It is certainly no substitute for what was written in Confidential Reports of the applicant by his reporting officer Smt. K. Narain. Hence, there is no case made out for the holding of review D.P.C., particularly because the D.P.C. held in 1974 had not only the Confidential Report of the applicant, but also the report of Shri G. Shankaran, yet it graded him as 'good' only, letting him thus be superseded by his juniors who secured a higher grading.

9. It is well settled that there can be no claim for promotion as a matter of right; the official concerned has only the right to be considered for promotion. So long such consideration is in accordance with the procedure established by rules, or other official instructions and it is free from the vice of bias or malafides, any challenge to it will usually be unsuccessful.

(29)

-7-

10. The applicant in this case has been properly considered by the D.P.C. in 1973-74. There is no justification to interfere with the findings of the said D.P.C. The question of re-fixing the seniority of the applicant does not therefore, arise.

11. In the result, we find no merit in the application, which is hereby dismissed without any order as to costs.

*Shakeel*

A.M.

*Verma*

V.C.

Shakeel/ Lucknow Dated: 4-2-92