

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 325/89
~~XXXXXX~~

198

DATE OF DECISION 4-6-91

Shri S.N. PARWAL Petitioner

Mr. G.S. Walia Advocate for the Petitioner (s)

Versus

UNION OF INDIA AND ORS. Respondent

Mr. A.I. Bhatkar, Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. ~~M.Y. PRIOLKAR~~, MEMBER (A)

The Hon'ble Mr. T.C.S. REDDY, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ?

4/6/91

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

ORIGINAL APPLICATION NO. 325/89

Mr. S.N. Parwal,
C/o Shri G.S. Walia,
89/10, Western Railway
Employees Colony,
Matunga Road,
Bombay ...400 019

...Applicant

Vs.

1. Union of India
through Min. of Finance
Department of Revenue,
Government of India,
New Delhi - 110001

2. Collector of Customs,
New Customs House,
Bellard Estate,
Bombay - 400 038

3. Secretary,
Central Board of
Excise and Customs,
North Block,
NEW DELHI - 110001

... Respondents

CORAM : HON'BLE SHRI M.Y. PRIOLKAR, MEMBER(A)

HON'BLE SHRI T.C.S. REDDY, MEMBER(J)

Appearance:

Mr. G.S. Walia, Adv,
for the applicant

Mr. A.I. Bhatkar,
(for Mr. M.I. Sethna)
Adv, for the Respondents.

JUDGMENT

(PER T.C.S. REDDY, M(J))

DATED: 4-6-91

The present application is filed under Section 19
of the Administrative Tribunals Act for the following reliefs

T.C.S. Reddy

OA NO.325/89

namely to call for the records and proceedings which led to the issue of impugned promotion list dated 25.2.1988 and after considering the legality, validity, propriety and constitutionality thereof to quash and set aside the same. The facts giving rise to this application in brief may be stated as follows:-

2. The applicant at the time of filing this application was working as an Appraiser under Collector of Customs, Bombay. He was appointed as an Appraiser on 14.2.1977 after being selected by the Union Public Service Commission. The applicant while working as an Appraiser in Foreign Travel Tax Unit of the Bombay Custom House and working on overtime, the Assistant Collector passed an order directing the applicant and one examiner Mr. Sidwani to examine the goods at the Air India Warehouse.

Accordingly the applicant and the said Shri Sidhwani undertook the examination. The said goods were covered by Shipping Bill No.6311 dated 13.6.1980 covering export of 4 (four) cases declared to contain Indian chilly power of FOB value of Rs.2640/ with declared weight of 180 kgs. The order of the Export Department on the said shipping bill was to "Examine 100%, check description, let export after examination and weighment". The applicant stated that on opening of one of the four cases it was found that the case contained different kinds of gram spices along with chilly powder. In view of the discrepancy in the description another case was opened and it was similarly found to contain gram spices in addition to the declared chilly powder. The gross weighment of the four cases were also ascertained and found to be 216 kgs. as declared against 180 kgs. Subsequently, on information from

T. C. Reddy

9

OA NO.325/89

the Air India the Her Majesty's Customs, London detected 2.9 kgs of Hashish valued at Rs.72,000 in the said consignment. On regard to this, departmental proceedings were initiated against the applicant with the issue of chargesheet on 14.6.1984. The proceedings were concluded with the issue of order on 19.9.1986 imposing the penalty of reduction in pay of the applicant by four stages from Rs.920/- to Rs.775/- in the time scale of pay with cumulative effect for the period of four years. The operative portion of the order of punishment imposed by the disciplinary authority on the applicant is as under:-

" In view of the above findings, I order the reduction of Shri Parwal's pay by four stages from Rs.920/- to Rs.775/- in his time scale of pay for a period of four years. He will not earn increments during this period. On expiry of the punishment, the reduction shall not have the effect of postponing his future increments of pay".

The applicant preferred an appeal dated 10.3.1986 to the President of India against the said order and the said appeal was considered in consultation with the U.P.S.C. and it was decided to modify the penalty to that of reduction of pay four stages from Rs.920/- to Rs.775/- in the time scale of pay for a period of two years with the direction that the applicant will not earn increments during the period and with further stipulation that on expiry of this period, the said reduction shall not have the effect of postponing his future increments. The said order passed by the President is as under:-

T. C. M. P.

610

OA NO. 325/89

✓ "The appeal put in by Shri Parwal is allowed to the effect that the aforesaid penalty is modified to the effect that the reduction of pay by four stages from Rs. 920/- to Rs. 775/- in the time scale of pay for a period of two years with the direction that he will not earn increments during the period and with further stipulation that on expiry of this period, the aforesaid reduction shall not have the effect of postponing his future increments".

While the matters stood like that, the Departmental Screening Committee met on 26.5.1987 to consider the promotion of Group 'B' officers to the Group 'A' service on adhoc basis. As on 26.5.1987 as the applicant was undergoing penalty the name of the applicant was not considered for the said promotion. The panel in the case of Appraiser for the promotion to Group 'A' service could not be implemented on account of the fact that the seniority dispute between the promotee and direct recruit was before the Central Administrative Tribunal and afterwards before the Supreme Court. On 28.5.1987 the Central Administrative Tribunal, Principal Bench gave a judgment to the effect that all India List of Appraisers prepared on the principle of Rota-quota system was liable to be quashed and directed the respondents therein to prepare a combined list on the basis of continuous length of service. The government filed an appeal in the Supreme Court against the aforesaid judgment of the Tribunal. The Supreme Court granted on 28.1.1988 an interim stay from the operation of the Tribunal's order. In pursuance of the Supreme Court's order dated 28.10.88, the promotion order promoting 28 Appraisers to

T. C. Anup

8A NO.325/89

Group 'A' service on adhoc basis was issued on 25.2.1988, based on the proceedings of the Departmental Screening Committee held on 26.5.1987. In the said order dated 25.2.1988, as some juniors to the applicant were promoted, the applicant made certain representation to the Union of India the 1st Respondent herein, to the Collector of Customs the second respondent herein and to the Secretary, Central Board of Customs the third respondent here to consider his promotion to the post of Assistant Collector. As the applicant did not get any suitable reply to the said representation, he has filed the present application for the above said reliefs and in the alternative for some other reliefs. It is not necessary to consider the alternative reliefs that are prayed by the applicant as the learned counsel appearing for the applicant did not press before us the said alternative reliefs.

3. The respondents have filed detailed counter opposing the said application. The fact that when the applicant was working as Appraiser certain departmental proceedings were initiated against him and that he was punished in the said departmental proceedings by imposing the penalty by reducing his pay by two stages from R .920/- to Rs.775/- as per the order dated 11.1.1988 passed by the President of India is not in dispute in this case. It is also not in dispute in this case that the said order of punishment came to an end on 5.2.1988. It is also not in dispute in this case that the departmental promotion committee met on 26.5.1987 to consider the promotion of Group 'B' officers to Group 'A' service on adhoc basis and that on 26.5.1987 the said departmental screening committee had empanelled certain officers for promotion to the Group 'A'. 6.

12

OA NO. 325/89

service without considering the name of the applicant for the said promotion. It is the case of ~~the~~ Mr. Walia that non consideration of the name of the applicant on 26.5.1987 by the Departmental Promotion Committee for promotion from Group 'B' to Group 'A' service is against the rules and regulations and principles of natural justice. The learned counsel, relies on instructions issued in the Home Ministry circular No.22011/6/75-Ests.(D) dated 30th December, 1976 which reads as follows:-

"An officer whose increments have been withheld or who has been reduced to a lower stage in the time-scale, cannot be considered on that account to be ineligible for promotion to higher grade as the specific penalty of withholding promotion has not been imposed on him.(emphasis supplied) The suitability of the officer for promotion should be assessed by the competent authority as and when occasion arises for such assessment. In assessing the suitability the competent authority will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of the imposition of the penalty he should be considered suitable for promotion. Even where, however, the competent authority considers that in spite of the penalty the officer is suitable for promotion, the officer should not be promoted during the currency of the penalty. (emphasis supplied).

The learned counsel Mr. Walia appearing for the applicant strenuously contended before us that in view of the first sentence in the instructions the applicant should have been considered for promotion to Group 'A' service (Assistant Collector of Customs) even when he was undergoing the said penalty. According to the learned counsel the non consideration

13

OA NO.325/89

is against the spirit of the above said instructions. But Mr. Wallia appears to have lost sight of the last sentence in the said circular. The first and the last sentence along with further instructions in the said circular have to be read together and appropriate conclusions are to be drawn. It is evident from a reading of the entire instructions contained in the said circular that the officer should not be promoted during the currency of the penalty. So that being the position we are unable to understand how the applicant can complain to this Tribunal that his case was not considered for promotion on 26.5.1987 i.e. during the period he was undergoing the said penalty. Admittedly the said penalty ~~was~~ came to an end by 5.2.1988. Hence we see no merit in this application at all.

4. No doubt on 25.2.1988 the respondents have issued the orders of promotion with regard to the employees who are juniors only to the applicant as Assistant Collectors. It is that order that is being challenged in this application. But the said promotion orders dated 25.2.1988 had been issued on the basis of the recommendations of the departmental promotion committee which met on 26.5.1987. ~~In view of the stay orders of the Supreme Court referred to earlier, the said promotion order dated 25.2.1988 which is in question before us has been issued.~~ As the applicant had no right as on 26.5.1987 for consideration of his name for promotion by the departmental promotion committee, it is not open for the applicant to question the said orders of promotion dated 25.2.1988, which are purely issued on the basis of the recommendations

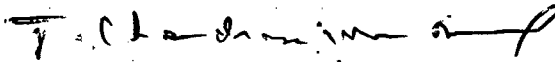
T. S. P.

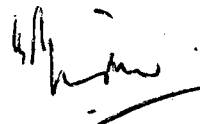
1w

OA NO.325/89

of the departmental promotion committee that met on 26.5.1987. The applicant has since been promoted by the departmental promotion committee w.e.f. 17.1.1990. But for the reasons earlier mentioned the applicant is not liable to be considered for promotion in the year 1987. So we see no merit in this application and hence this application is liable to be dismissed.

5. In the result the application is hereby dismissed. The parties shall bear their own costs in the application.


(T.C.S. REDDY)
MEMBER (J)


(M.Y. PRIOLKAR)
MEMBER (A)