

(P) (Q)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
PREScot ROAD; BOMBAY-400001

O.A. No.561/89

Alex Piedade Sales  
Opp. Latif Chawl  
Kantem  
Baina  
Vasco da Gama  
Goa

..Applicant

V/s.

1. Union of India  
through Secretary  
Ministry of Finance  
Central Secretariat  
New Delhi

2. Assistant Collector of  
Customs and Central Excise  
Customs House  
Panaji, Goa

3. Shekhar Chandjain  
4. L.L. Chowgule

5. Menon P. Vaz

6. S B Chinchinkar

7. Kum. K.A.D.J. Fonseca

8. Joao T. Cruz

9. Prakash Haldankar  
C/o. Collectorate of  
Customs and Central Excise,  
Customs House  
Panaji, Goa

.. Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.  
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE

Mr. M B DA COSTA  
Advocate  
for the applicant



ORAL JUDGMENT:  
(PER: M Y PRIOLKAR, MEMBER(A))

DATED: 28-8-1991

The applicant in this case was appointed on officiating basis as Inspector, Central Excise in the Collectorate of Customs and Central Excise, Goa with effect from 23.7.1980. The applicant's grievance is that by circular No.21/88 a seniority list was circulated of Inspectors of Central Excise Collectorate of Customs and Central Excise in which seven inspectors of Central Excise who were junior to the applicant were

9

shown as confirmed and placed above the applicant who was shown in that list as officiating and placed below his juniors.

In reply to the representation submitted by the applicant against his non-confirmation and giving higher seniority to his juniors, he was informed by the memorandum dated 15.6.1989 that in view of the DPC meeting held on 25.9.89 which considered promotion, <sup>and</sup> the applicant's ACR for the year 1985 which had adverse remarks, he could not be confirmed with effect from 30.4.1985 i.e., the date on which his immediate junior was confirmed. He was also informed that since he is already confirmed as UDC there was no case for considering him for confirmation now as Inspector of Central Excise.

The adverse remark in the ACR for the year 1985 is as follows:

"During nine months the officer was posted in Anti-Smuggling Unit and value of goods seized is Rs.1950/- which shows his performance. It is rated as Poor".

According to the applicant the above remark can hardly be considered as adverse and should have been ignored by the DPC. Learned counsel for the applicant also contended that this remark was for the year 1985 and was communicated to the applicant on 2.5.1986. The DPC has not considered his case at all in 1987 and admittedly the case was considered by the DPC which met in 1989.

On the last occasion, since 1987 DPC proceedings were not produced by the respondents on the ground that they were not readily available, even after we have adjourned the hearing for some time, and we had also made it clear that on the next date i.e., to-day the respondents should produce the record of 1985, 1987 and 1989 DPC Proceedings. Even today the respondents have not produced this record and the counsel for the respondents has merely sent an application requesting that the respondents' written submissions may be taken into account and the case disposed of. There is no representative of the respondents present to produce the record.

The applicant has made two prayers in this application. One, the applicant be & held to be entitled to be confirmed with effect from 30.12.1985 and the ~~same~~ second, the seniority list be struck down and the applicant be placed above respondent no. 9. Regarding his first prayer the respondents have stated that the applicant had represented against the adverse remarks of 1985 but his representation was rejected and since there was no appeal against the same the adverse remarks are to be treated as final. Accordingly, since the applicant has not pressed the question of adverse remarks after his representation has been rejected, we have to accept the respondent's contention that these remarks have become final. However, we find considerable merit in the second prayer of the applicant that the seniority list is liable to be struck-down and that the applicant has been given lower seniority vis-a-vis his juniors. It is not in dispute that Respondents nos. 3 to 9 started officiating as Inspectors much later than the applicant and they are admittedly junior to the applicant. Undoubtedly, on the basis of their earlier confirmation, they have now been shown as senior to the applicant. It

is also not in dispute that the applicant was regularly promoted to officiate as Inspector in accordance with the rules and after taking into account the claims of ~~the~~ employees ~~is~~ eligible for such promotion. It is now well settled in view of the recent decisions of the Supreme Court that seniority should be granted from the date of continuous officiation of an employee provided promotion was made in accordance with the rules and after considering the ~~maximum~~ claims of all eligible employees. We have, therefore, to hold that the applicant is entitled for his seniority from the date ~~he started officiating and the~~ he started continuously <sup>to</sup> officiate as Inspector i.e., the seniority should be reckoned from 30-12-1985. Accordingly, the seniority list circulated is quashed and set aside. The respondents are directed to re-cast the seniority list giving the applicant seniority with effect from 30-12-1985. The application is allowed with the above directions, with no order as to costs.

  
( M Y PRIOLKAR )  
MEMBER(A)

  
( U C SRIVASTAVA )  
VICE CHAIRMAN