

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 343/96

Transfer Application No:

DATE OF DECISION: 17th JULY 1996

P. Subramani

Petitioner

in person

Advocate for the Petitioners

Versus

U.O.I. & 3 ors.

Respondent

Mr. Sureshkumar for

Mr. M I Sethna

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (R)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESKOT ROAD, MUMBAI-1

ORIGINAL APPLICATION No. 343 of 1996

DATED: THIS WEDNESDAY 17th JULY, 1996

Coram: Hon. Shri B.S. Hegde, Member (J)
Hon. Shri M.R. Kolhatkar, Member (A)

P. Subramani
Additional Commissioner
Customs and Central Excise
Panaji, Goa
(Applicant in person)

..Applicant

V/s.

1. Union of India through
Secretary, Dept. of Revenue,
Ministry of Finance,
North Block, New Delhi 1.
2. The Chairman,
Central Board of Excise and
Customs, North Block,
New Delhi 1.
3. Union of India,
through Secretary,
Department of Personnel &
Training, Ministry of Personnel,
Public Grievances and Pension,
North Block, New Delhi 1.
4. Union of India,
through Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi 1.

(By Advocate Mr. Suresh Kumar
for Mr. M.I. Sethna, Govt.
Standing Counsel).

..Respondents

O R D E R
(Per: B.S. Hegde, Member (J))

By this O.A. the applicant is challenging the
alleged arbitrary action of the Respondents in not giving
him promotion to the post of Collector of Central Excise
(now it is called as Commissioner) which is due to him as
on 31.3.1990 (but the result of the D.P.C. of 1990 and
subsequent D.P.C.s were kept in a sealed cover.



2. It is submitted by the Applicant that the procedure adopted by the Respondents is in clear contravention of the procedure laid down in the O.M. dated 14.9.1992 issued by the Department of Personnel and Training, and the contents of the said O.M. are squarely applicable to this case.

3. Accordingly the applicant prays for the following reliefs:

"(i) to direct the respondents to grant the applicant regular promotion as Collector of Central Excise w.e.f. 31.3.1990, when his immediate junior, Shri Devendra Dutta, was so promoted, or such other date as this Hon. Tribunal deems fit and proper;

"(ii) to direct, in the alternative, that the applicant be granted ad hoc promotion as Collector of Central Excise w.e.f. 31.3.1990, or such other date as this Hon. Tribunal deems fit and proper;

"(iii) to direct that Non Functional Selection Grade be granted to the applicant." etc.

4. It may be recalled, that the applicant initially filed this O.A. before the Principal Bench of the Tribunal, New Delhi. When the matter came up for hearing on 27.9.95 the Ld. Counsel for the applicant did not press the relief in terms of prayer 8(i). However, the respondents had been directed to file reply and serve Dasti Notice. The Respondents did not file any reply and accordingly the Tribunal passed an order stating that "one post of Commissioner be kept vacant until further orders." The said interim order continued thereafter till now. Therefore, the only prayer required now to be adjudicated is the prayer 8(ii) i.e., ad hoc promotion to the post of Commissioner.

5. We have carefully gone through the records and have heard the applicant in person and the Ld. Counsel for the respondents Shri Suresh Kumar for Mr. M.I. Sethna.

6. The contention of the applicant is that he was compelled to file this O.A. because the Respondents had not given him promotion to the grade of Commissioner which was due to him in the year 1990 despite stay order granted by the Madras High Court, as against criminal prosecution initiated against him, in Writ Petition No. 14475/91. The Respondents in that Writ Petition till now did not care to file any application for vacating the interim order passed by the High Court on 26.7.1993 which states that "all further proceedings No.F.No.C.13011/24/86-Ad.II dated 16.1.1989 be and hereby is stayed pending Writ Petition No.14475/91 on the file of this Court". Therefore, the contention of the applicant is that subsequent to the O.M. dated 14.9.92 of D.O.P.T. the Respondents were duty bound to consider him for promotion on ad hoc basis. The disciplinary proceedings which were initiated against him in 1989 he was completely exonerated by the President, which is clear from the order passed by the President of India on 23.11.1992 stating that after considering the Inquiry Officer's report it was decided to drop the charges framed against Shri Subramani. The applicant contends that D.P.C. was convened on 17.4.1994 and the applicant and two others have not been cleared from vigilance angle though the applicant had been recommended for ad hoc promotion, nevertheless that the ad hoc promotion has been denied to him. It is the contention of the Applicant that both the disciplinary proceedings as well as the criminal proceedings were initiated against him

and the articles of charges are one and the same. Since he has been exonerated in the departmental disciplinary proceedings and no progress has been made in the criminal prosecution pending against him at Madras state and though sanction was granted for prosecuting him under Section 6 of Prevention of Corruption Act but no progress has been made in so far as criminal prosecution is concerned. He urged that since he was eligible to be promoted to the post of Commissioner But for the pending inquiry he could not be promoted in the year 1990. However, as per the procedure laid down in O.M. dated 14.9.1992 an ad hoc promotion has to be considered in accordance with the procedure laid down therein, if his juniors have been promoted earlier. He further states that though the Department was inclined to give promotion the said ad hoc promotion has been rejected by the A.C.C. thereby he contends that so far as the ad hoc promotion is concerned it is not required to be ratified by the A.C.C. in terms of Transaction of Business Rules, 1961, which inter-alia lays down the role of the A.C.C. in regard to 'Regular Appointments' to the level of Joint Secretary and above and it is clear that ad hoc appointments meant to be ordered as a result of some judicial pronouncement or as in this case under a specific instruction of Government of India do not require to be ratified by the A.C.C. The said contention does not seem to be appropriate and we are not inclined to accept the same; because the applicant's main thrust of argument is that in the facts of this case, he should be considered and promoted to the post of Commissioner on ad hoc basis as per O.M. od D.O.P. dated 14.9.1992. The applicant further contends that once he fulfills the conditions as laid down in 1992 OM, the

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respondents are left with no other alternative but to give him ad hoc promotion in terms of the O.M. which is denied to him since 1990. He also stated that in April 1996 the Department itself has recommended to the C.V.C. for withdrawal of sanction and he urged that the sanction is subjudice and after sanction it becomes non-est in the eye of law. Though sanction was awarded on 16.1.1989 the charge sheet before the Special Judge, Madurai, was filed only on 13.4.1990. Till February 1992 no progress had been made, thereby he was compelled to file a Writ Petition in the Madras High Court and obtained ex-parte stay / interim order and the Respondents did not care to file any reply nor made any efforts to vacate the interim order.

7. The Respondents in their reply filed by one Mr. M.S. Negi had not disputed about the factual averments made by the applicant. However, they contended that the applicant's case of promotion came up for consideration in December 1989, January 1990 but since he was facing departmental proceedings as also prosecution case, the findings of the DPC with regard to his suitability for promotion were placed in 'sealed cover' in accordance with the procedure laid down in this behalf. He was again considered for promotion by the D.P.C. which met in October, 91 and November 1992, but the findings of both these DPCs were again placed in sealed cover as the departmental proceedings were still in progress. The departmental proceedings were dropped by the President of India on 23.11.1992. Applicant filed Writ Petition in Madras High Court which stayed all proceedings pending Writ Petition No. 14475/91 on the file of the Hon'ble Court. The only contention raised by the Respondents in their reply is that the applicant's case

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for ad hoc promotion was duly considered by the competent authority but in view of the grave charges pending against him, it has been decided not to give him ad hoc promotion to the grade of Commissioner of Customs and Central Excise. No reasons have been assigned by the respondents as to why they have not moved the High Court, Madras, for vacating the ex-parte stay order granted in favour of the applicant especially according to them grave charges are pending against the applicant. When we asked the Ld. Counsel for the respondents to furnish the D.P.C. proceedings of 17.8.1994 the same was produced. On perusal of the same we find that the applicant has been graded 'Very Good' and further observed "that the case of applicant, along with two others, a remark has been made that in case they are acquitted/fully exonerated, as the case may be, and the competent authority issues integrity certificate in their favour, they will be placed in the panel for promotion in Annexure-II".

8. As stated earlier since the applicant has already been exonerated by the President in Departmental Proceedings and the Criminal Prosecution has been stayed by the High Court, Madras, and the respondents did not take/make any efforts to vacate the interim order passed by the High Court, Madras, or to get it modified, it is imperative on the part of the respondents to consider the applicant for promotion on ad hoc basis for the post of Commissioner in terms of OM dated 14.9.1992. However, on perusal of relevant documents we find that the Respondents did not offer any satisfactory explanation in not considering the applicant on ad hoc basis in terms of DOP OM (of 1992) and in view of stay granted by the Madras High Court and the reasons for not vacating the said stay order in that event of the matter it cannot be said that the delay if any in completing the criminal prosecution is on the part of
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the applicant. Since there is a considerable delay in considering the request of the applicant for promotion on ad hoc basis, they are required to convene a Review D.P.C. and consider the applicant for the post of Commissioner and pass appropriate order within a period of two months in terms of the O.M. dated 14.9.1992.

9. For the reasons stated above and in the interest of justice we hereby direct the respondents to convene a review D.P.C. and consider the case of the applicant afresh for promotion to the post of Commissioner on ad hoc basis within a period of two months from the date of receipt of this order in terms of D.O.P O.M. dated 14.9.92 and in the light of the observations contained in the order. If the Review D.P.C. finds that the applicant is fit for promotion to the afore-said post of Commissioner he will be entitled to all consequential benefits. No order as to costs.

M.R.Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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