

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Friday the 15th day of March, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.825 OF 1996

Anuj Bhatnagar,
Examiner,
Bombay Customs,
R/o A-501 Marve Manor Building,
Lower Kharodi Malad (West)
Bombay - 400 095.

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
CBEC, New Delhi.
2. Chief Commissioner of Customs,
New Customs House,
Mumbai.
3. The Commissioner of Customs,
New Customs House,
Mumbai.
(By Advocate Shri V.D.Vadhavkar for Shri
M.I.Sethna for respondents) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

This is an application made by applicant Anuj Bhatnagar seeking the following relief:

(a) That this Hon'ble Tribunal will be pleased to call for records and proceedings leading to the placing of the applicant's selection in a sealed cover as contended by the Respondents in letter dated 22.3.1996 and after going through the legality or otherwise thereof this hon'ble Tribunal will be pleased to direct the Respondents to open the sealed cover and to implement the



decision of the Departmental Promotion Committee contained therein in respect of his selection held for promotion to the post of Customs Appraiser in 1995.

(b) That this Hon'ble Tribunal will be pleased to direct the Respondents to promote the applicant to the post of Appraiser with retrospective effect from the date the applicant's juniors namely Anil Prasad, Smt.P.S.Brinda and Shri R.D.Petare were promoted as Appraisers vide promotion order dated 30.10.1995.

(c) That pending the hearing and final disposal of this application Respondents be restrained by an order and injunction issued by this Hon'ble Tribunal from promoting any Examiners who were juniors to the applicant to the post of Appraiser until the applicant is so promoted.

(d) That costs of this Application be awarded to the applicant, and;

(e) That such other and further reliefs as are expedient be granted in favour of the applicant in facts and circumstances of the case.

2. At the outset it may be stated that this case which was called out at the start, ⁱⁿ ~~at~~ ^{was when} the morning today with a plea was made by a junior of learned counsel for Shri G.K.Masand that Shri



....3/-

Masand would appear a little later and that he was ready to argue the case today. We waited in the matter for about 2 1/2 hours, after which the case was called out again. Since Shri Masand has not appeared and junior is not ready to argue the case, we decide that the matter would be heard on merits as far as the applicant was concerned based on the OA and other papers on record. The case was heard on behalf of the respondents by learned counsel Shri V.D.Vadhavkar for learned counsel Shri M.I.Sethna.

3. The facts of the case are in a short compass. The applicant has stated that he is a direct recruit Examiner, having entered Bombay Customs in November, 1988. Consequent upon a raid on the premises of GPO, where he was working, on 15.9.1993, the CBI has attempted to link the applicant with the guilty person therein and has attempted to book him by means which he alleges would not succeed. Further details of the case and its alleged infirmities are pointed out in the OA by the applicant who also states that he was kept under suspension also between January, 1994 and October, 1994. It is stated that applicant has not been served with any charge sheet in regard to disciplinary proceedings.

4. The applicant further avers that a DPC was convened after revocation of his suspension, wherein his case was considered, but is aggrieved that vide impugned order dated 30.10.1995, Examiners, junior to the applicant as mentioned in Para 6 of the OA have been promoted to the post of Appraiser. The applicant has taken certain grounds in Para V, which will be considered and discussed ahead in this order.

5. The respondents have filed a written statement of reply, where they have attempted to meet the averments in the OA parawise. They have stated that in the DPC held for ad-hoc promotion to the cadre of Appraiser on 21.6.1995, applicant's case was considered under sealed cover procedure in view of a Vigilance case registered against him but consequent to selection therein, no junior of applicant was promoted. Thereafter the respondents state in written statement, further DPC meetings, for regular and ad-hoc promotion to the grade of Appraiser, were held on 30.10.1995 and 20.6.1996 but since a charge sheet has been filed on 19.5.1995 against the applicant. The applicant's name again was considered under sealed cover procedure in the aforesaid two DPCs of 30.10.1995 and 20.6.1996. It is also stated that applicant's representation was examined and a reply given along with the aforesaid reasons.

6. We have considered the grounds taken in the OA and other papers and have also heard Shri V.D.Vadhavkar in the matter. The basic fact may be recalled. In the first DPC, no prejudice is caused to the applicant since no junior is promoted. In the second and third DPC of October, 1995 and June, 1996, the fact that is eminently important is that charge sheet had been filed in the Court of Special Judge, Mumbai by the CBI on 15.9.1995. In fact the letter at page 52 of the paper book would seem to corroborate this statement (and there is no rebuttal of this by the applicant).



7. In one of the grounds taken by the applicant in the OA it is claimed that the direction should be to promote the applicant from the date of his juniors viz. Shri Anil Prasad, Smt.P.S.Brinda and Shri R.D.Petare who have been promoted as Appraisers vide order of promoted dated 30.10.1995. Now the right vis-a-vis juniors can certainly be claimed in normal course but here it is clear that a charge sheet has been filed in the Court against the applicant and is pending therein when the DPC is taken/when promotion orders are issued. The law in this regard is very clear and no rights can accrue vis-a-vis a junior when a charge sheet is pending admittedly as is clear from record (Union of India Vs. K.V.Jankiraman (AIR 1991 SC 2010).

8. Another ground taken in Para V (b) is that the applicant was neither under suspension nor served with a charge sheet in disciplinary proceedings nor served with a charge sheet in criminal proceedings. The last part is factually incorrect. The point regarding suspension or there being no departmental enquiry does not become relevant and, therefore, the contention taken by the applicant to the effect that resorting to sealed cover procedure was wrong is not valid. In fact, the support taken by applicant from the case of K.V.Jankiraman (supra) and Delhi Development Authority Vs. H.C.Khurana . (1993) 3 SCC 196 is totally misplaced. It does not help his case. The grounds taken at Para V (c) is matter of evidence and cannot be gone into by us pending the criminal case against the applicant. In another part of the grounds taken, it is prayed that promotion may be provided



on ad-hoc basis. This is not a relief sought and cannot be considered in this OA. It is a matter that could be looked into by the respondents as per rules and no directions can be given in this regard.

9. In view of the above discussions, we do not find any merit in the OA and it is accordingly dismissed without any order as to costs.

S.L.Jain
(S.L.Jain)
Member (J)

B.N.Bahadur

(B.N.Bahadur)
Member (A)

mb

Order and warrant dt 15/3/2
to Appellants
despatched
on
6/4/2
W