

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 75/99

Dated, this Friday the 22nd day of October 1999.

Shri S.B.Kamath Applicant.

Shri M.S.Ramamurthy Advocate for the
Applicant.

VERSUS

Union of India & 20rs. Respondents.

Shri M.I.Sethna Advocate for the
Respondents.

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.
HON'BLE SHRI D.S.BAWEJA, MEMBER(A)

- (i) To be referred to the Reporter or not?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal?
- (iii) Library?

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

abp

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ORIGINAL APPLICATION NO:75/99.
DATED THE 22ND DAY OF OCTOBER,99.

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN.
HON'BLE SHRI D.S.BAWEJA, MEMBER(A)

Shri S.B.Kamath,
Appraiser in the
Customs Department in Mumbai,
and residing at 301, LA BELLE,
St.Anthonys Road, Vakola,
Santacruz(East),
Mumbai - 400 055.
By Advocate Shri M.S.Ramamurthy.

... Applicant

v/s.

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
NEW DELHI-110 011.
2. The Chairman,
Central Board of Excise & Customs,
Ministry of Finance,
North Block,
NEW DELHI-110 011.
3. The Commissioner of Customs(G),
New Custom House,
Ballard Estate,
Mumbai - 400 038.
... Respondents.

By Advocate Shri M.I.Sethna

(ORDER) (ORAL)

Per Shri R.G.Vaidyanatha, Vice Chairman.

In this application, the applicant is seeking a direction for promotion from the time his juniors were promoted and for other consequential benefits. The respondents have filed reply. We have heard both the counsels and since the point involved is a short point, we are disposing of the same at the Admission Stage.

...2/-



2. The applicant Shri S.B.Kamath who is working as Appraiser in the Customs Department is seeking a relief that the respondents be directed to promote the applicant as Assistant Commissioner of Customs and Central Excise (JTS) from the date his juniors have been promoted. The applicant was not given promotion presumably on the ground that some criminal case was pending and he was also involved in some Disciplinary Enquiry. It ~~was~~ now brought on record that ⁱⁿ ^{the} criminal case, the CBI did not file charge sheet and therefore the matter was closed by Criminal Court as can be seen from the order dated 2/2/94 in C.C.No.153/N/1993 of the Additional Chief Metropolitan Magistrate which is at page-16 of the paper book. It is further seen that Disciplinary Enquiry proceedings against the applicant were dropped as per order of Disciplinary Authority dated 22/1/98 which is at page-18 of paper book. Applicant's grievance is that inspite of exoneration from the disciplinary enquiry and closing of criminal case, he has not been given promotion.

3. Respondents in their reply have stated that the applicant's case will be considered for promotion from Group 'B' to Group 'A' (JTS).

4. In view of the pleadings, there is no difficulty in holding that the applicant's case should be considered for promotion. It is not clear from the record whether the *Kept it & finding in Sealed cover*. DPC If the DPC recommendations are kept in sealed cover as per sealed cover procedure rules, then in view of the exoneration of disciplinary enquiry proceedings and closure of criminal case, and sealed cover will have to be opened and will have to be given

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and giving
effect to by Appellate Authority. However, in case sealed cover procedure is not followed, then review DPC will have to be called and applicant's case for promotion will have to be considered whether he is entitled to promotion retrospectively w.e.f 19/10/95 or any other date from which date applicant's junior came to be promoted.

5. If the review DPC finds that the applicant is fit for promotion then he should be promoted retrospectively, from the date his immediate junior came to be promoted with ~~notional~~ notional fixation of pay till the date of actual promotion. The question whether the applicant is entitled to arrears of pay from the date ~~of notional promotion~~ ^{has to be decided} by Competent Authority, ^{as} per sealed cover procedure rules and as per law laid down by Supreme Court in Jankiraman's case reported at AIR 1991 SC 2010. If in case any adverse order is passed, he may take action as per law.

6. Applicant's further grievance is that after getting promotion as Assistant Commissioner (JTS) ~~she~~ is entitled to next promotion; the department shall consider the case of applicant ~~for next~~ promotion, which the department shall consider as per rules and if in case he is found fit to be promoted, he must be given all the

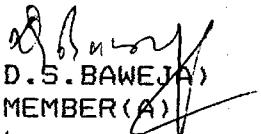
...4/-



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necessary benefit as per rules.

7. In the result, the OA is disposed of at admission stage subject to above observations. In the circumstances, the respondents are directed to comply with the above observations within two months from the date of receipt of copy of this order. There will be no orders as to costs.


(D.S. BAWEJA)
MEMBER(A)
abp.


R.G. Vaidyanatha
(R.G. VAIKYANATHA)
VICE CHAIRMAN