

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.339/2001.

Tuesday, this the 28th day of August, 2001.

Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Smt. Shanta Shastry, Member (A).

Devak Chand Jyotiram,
Flat No.440, Building No.38,
Sector 3, CGS Colony,
Antop Hill,
Mumbai - 400 037.
(By Advocate Shri Naveen Chomal)

...Applicant.

v.

1. Union of India
through the Under Secretary
to the Government of India,
AD.II(A), Government of India,
Government of India,
Ministry of Finance,
Department of Revenue,
C/o. Central Board of Excise & Customs,
North Block,
New Delhi - 110 002.
2. The Commissioner
Directorate of Preventive Operations,
(Customs & Central Excise),
4th Floor, 'A' Wing,
Lok Nayak Bhuvan,
Khan Market,
New Delhi - 110 003.
3. The Additional Commissioner (Preventive)
Rummaging & Intelligence, New Customs House,
Mumbai - 400 038.
4. Shree V.K.Panda,
C/o. Addl. Director (Marine),
Customs Marine Headquarters,
Hotel Waldorf, 2nd Floor,
16, Arthur Bunder Road,
Colaba,
Mumbai - 400 005.
5. Shree M.J.Austin,
C/o. Commissioner of Customs (Preventive),
Mobile Support Team, 6, Customs House,
Wellington Island,
Cochin - 682 009.
6. R.S.Sandhu,
Marine Engineer (Mech.),
C/o. Workshop Manager,
Customs Marine Workshop,
Bhagwati Bunder,
Ratnagiri - 415 612.

7. Shree D.S.Yadav,
C/o. Asstt. Commissioner of Customs (Preventive),
Customs Divisional Office,
Opp. Awabai High School,
Valsad,
Gujarat.
 8. Shree Roop Chand,
C/o. Commissioner of Preventive Operations
Customs & Central Excise,
4th Floor, 'A' Wing,
Lok Nayak Bhawan,
Khan Market,
New Delhi - 10 003.
- ... Respondents.
(By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna)

: O R D E R (ORAL) :

Smt. Shanta Shastri, Member (A).

The applicant is aggrieved by the office order dt. 12.4.2001 wherein his name has not been included in the list of promoted officers.

2. The applicant is Marine Engineer (Mech.) under the Directorate of Preventive Operations (Customs & Central Excise). On 18th September, 1998 sanction of the President was given for upgradation of 12 posts in the pay scale of Rs.2,375-3500 to Rs.2,200-4000 (pre-revised) Group 'A' in the Customs Marine Organisation. The posts to be upgraded comprise of 9 posts of Marine Engineers, 2 posts of Hull Engineers and one post from Skipper-cadre. The respondents decided to fill up these upgraded posts on ad-hoc basis and accordingly issued the impugned order dt. 12.4.2001. The applicant's name did not figure in this list.

3. It is the contention of the applicant that although he is senior to Respondents Nos. 4 to 8, his claim has been ignored. Further, the applicant's record has been clean, whereas the record of Shri T.N.Namane at Sl.No.1 in the impugned order is

...3.

not clean, so also there is some enquiry against Shri V.K.Panda whose name appears at Sl.No.7 in the impugned order. According to the applicant, he is at Sl.No.6 in the seniority list. He has produced the seniority list dt. 25.10.1999 which clearly shows that the applicant is placed at Sl.No.6. Therefore, the applicant feels at least his claim should have been considered first. Secondly, the applicant has learnt that his case was not considered as there was an adverse remarks in his ACR for the year 1998-99. The applicant submits that he has not been communicated the adverse remarks and therefore, the said remark should not have been taken into consideration, while deciding his promotion case. On these grounds, the applicant wants the impugned order to be set aside and prays for considering him for promotion together with all the benefits.

4. The Respondents had initially submitted that the applicant had relied on the wrong seniority list and his case was not considered because he was weighed ^{way h} down in the seniority list. In fact, the applicant along with 20 others had been considered for regularisation in 1988 by the UPSC and while communicating the approval of the UPSC, the UPSC had shown the applicant at the bottom of the list of those who were regularised i.e. at Sl.No.21. Relying on this, the Respondents did not consider his case for promotion. However, the Respondents now clarify vide their sur-rejoinder dt. 10.8.2001 that the seniority list of 25.10.1999 is still not finalised, it is only a draft seniority list and inadvertently 'draft' had remained to be mentioned. Thus, the list is still not finalised. That apart, the case of the applicant was considered by the DPC

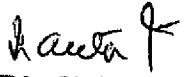
which met to consider ad-hoc promotion of the eligible Officers. It is seen from the proceedings made available by the Respondents that the applicant's case was also placed before the DPC and the applicant was at Sl.No.9. The DPC has made an observation in the remarks column against the applicant that he was not considered. There is also a foot-note stating that there were adverse comments, but the records do not show whether these adverse remarks were communicated to the Officers or not. Thus, it can be seen that the applicant's case was not considered in view of the doubt regarding communication of the adverse remarks to the applicant.

5. While the record of the applicant seems to be 'Good', there is an adverse remarks in the ACR for the year 1998-99. The respondents admit that the adverse remarks was not communicated to the applicant. In view of the settled position in this matter, as the adverse remarks were not communicated, they cannot be taken into consideration while deciding the case for promotion. Hence these adverse remarks should have been ignored.

6. In view of this position, the case of the applicant needs to be reviewed by ignoring the adverse remarks which were not communicated him. We therefore, direct the respondents to hold a Review DPC and to re-consider the case of the applicant by ignoring the adverse remarks in the ACR of 1998-99 and if found fit otherwise, to grant him, ad-hoc promotion with all consequential benefits and from the date Respondent Nos. 4 to 8 were promoted. It has already been admitted that there are enough vacancies, if the applicant's claim has to be considered

on merits.

7. The Respondents are directed to finalise the draft seniority list of 25.10.1999 expeditiously within a period of four months from the date of receipt of copy of this order. The Respondents are also directed to hold a Review DPC within a period of three months from the date of receipt of copy of this order. No costs.


(SHANTA SHASTRY)
MEMBER(A)


(ASHOK AGARWAL)
CHAIRMAN

B.