

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 514/2001

Date of Decision : 13-02-04

M.P.Chahande

Applicant

Shri D.V.Gangal

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar


Advocate for the
Respondents

CORAM :

The Hon'ble Shri A.K.Agarwal, Vice Chairman

The Hon'ble Shri Muzaffar Husain, Member (J)

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


(A.K.AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:514/2001

the 13th day of FEBRUARY 2004

CORAM: Hon'ble Shri A.K. Agarwal - Vice Chairman

Hon'ble Shri Muzaffar Husain - Member(J)

Milind Pralhad Chahande,
Stenographer Gr.II,
Directorate of Vigilance,
Customs & Excise West Zonal Unit,
Transport House,
Masjid (West), Mumbai.

...Applicant

By Advocate Shri D.V.Gangal

vs.

1. Union of India
through the Revenue Secretary,
Central Board of Excise and
Customs, New Delhi.
2. Commissioner of Central Excise
Mumbai - I, Commissionarate,
New Central Excise Building,
M.K.Road, Opp. Churchgate Station,
Mumbai.
3. Smt.S.B.Sangale,
Tax Assistant,
O/O Commissioner of Central
Excise, Mumbai V.
4. Smt.A.R.Jakhadi,
Tax Assistant,
O/O Commissioner of Central
Excise, Mumbai-II.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-


O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

This OA. has been filed by the applicant Milind Pralhad Chahande, working as Stenographer Grade II aggrieved by his non-consideration for promotion to the post of Inspector in September 2001. The applicant has been promoted to this grade vide order dated 26.4.2002 but his contention is that his name should have been included in the list of promotions issued in September, 2001. The applicant has urged that his name should have been considered by the DPC held in September, 2001 since he was fulfilling all the conditions as required under the Recruitment Rules. Although, he has been promoted on the recommendations of the next DPC w.e.f.26.4.2002, the promotion on a later date has adversely affected his seniority as well as emoluments.

2. The learned counsel for applicant mentioned that as per O.M. dated 22.2.1992 the select list of SC/ST officers has to be drawn up separately in addition to general select list. He pointed out that this was not followed by the DPC held in September, 2001. He further said that when adequate number of SC/ST candidates were not available within the normal field of choice, then the field of choice has to be extended to five times of the number of vacancies. In support of these contentions, he cited an order of CAT, Ernakulam given in T.Jayakumar vs. Commissioner of Central Excise & Customs & Anr.

...3/-



3. The learned counsel of respondents firstly mentioned that the applicant has not made any representation to the competent authority against his nonconsideration in the DPC held in September, 2001. Moreover, the applicant as per the Recruitment Rules was not eligible for promotion before 1.1.2001. He has been promoted after the recommendations of the next DPC w.e.f. 22.4.2002. No junior has superseded the applicant and in fact he has been appointed at the first earliest opportunity. Continuing his argument, he said that the judgement of CAT, Ernakulam is not relevant in this case. The DOPT O.M. dated 22.4.1992 is in fact only a clarificatory order to clarify the contents of O.M. dated 24.12.1980. However, all these issues are not relevant because of non-eligibility of the applicant before 1.1.2001. He pointed out that in the additional written statement filed on behalf of the respondents, it has been clearly mentioned in para 7 that "Moreover, the applicant had not completed two years of service in the grade of Stenographer Gr. II as required under the statutory rules as on the crucial date, i.e. 1.1.2001".

4. We heard both the counsels. The main issue for decision in this case is whether the applicant was eligible in September, 2001 for being considered for promotion.

5. The learned counsel for applicant mentioned that the applicant had completed two years of regular service as a Stenographer Gr. II before the date of DPC held on 3.9.2001. The requirement of treating 1st January of the Calendar year as the date is quite arbitrary and not sustainable in the eyes of law.




In support of this, he cited a judgement of CAT, Principal Bench, Delhi, Hardeep Singh vs. Union of India & Ors. (1987) 3 ATC 922, wherein the Tribunal relying on DOPT O.M. dated 4.12.1979 had held that crucial date should be "1st day of January of the year in which the examination is held if the examination is held in the first half of the year; and 1st day of August of the year in which the examination is held, if the examination is held in the latter half of the year".

6. The learned counsel for respondents cited a Circular dated 17.9.1998 regarding fixing of crucial date for determining eligibility of officers to be considered by the DPC for promotion. He said that earlier the practice was to have different crucial dates depending upon whether the ACRs are written Calender year-wise or Financial year-wise. The Circular dated 17.9.1998 has laid down that irrespective of the fact that ACRs are written financial year or calander year-wise, the crucial date will be the first day of the vacancy year. It means for a vacancy occurring in any month of 2001, the crucial date for determining eligibility would be 1.1.2001.

7. After going through the record and hearing both the counsels, we are of the view that in this case O.M. dated 17.9.2001 is relevant. The earlier O.M. dated 4.12.1979, referred to by the Tribunal in its order dated 29.1.1987 relates eligibility for examination held by UPSC/SSC, while the other circular dated 17.9.1998, it is specifically for the DPC. It is

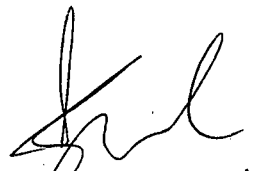
thus ⁰clear that as per standing instructions, the applicant had not completed the requisite two years' service in the feeder grade for becoming eligible for promotion.

8. In view of facts indicated in the above para, the OA. deserves to be dismissed and is dismissed accordingly. No order as to costs.



(MUZAFFAR HUSAIN)

MEMBER (J)



(A.K. AGARWAL)

VICE CHAIRMAN

mrj.