

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TENTH DAY OF APRIL, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri P.Srinivasan Member(A)

APPLICATION No.1124/86(F)

P.K.Shivananda,
Shavanthi Compound,
Opp.Azad Industries,
Jeppu, Mangalore - 2.
(Shri Narayanamurthy

... APPLICANT
... Advocate)

V.

The Collector of Central Excise,
Central Revenue Building,
Queens Road,
Bangalore - 1.
(Shri M.S.Padmarajaiah

... RESPONDENT
... Advocate)

This application has come up before the court today.

Hon'ble Shri P.Srinivasan, Member(A) made the following :

O R D E R

In this application filed under Section 19 of the Administrative Tribunals Act of 1985, the relief sought by the applicant is that he should be allowed to cross Efficiency Bar(EB) in the scale of Inspector of Central Excise with effect from 1.12.77 and that he should be confirmed as Inspector from the date his immediate junior was confirmed.

2. Sri T.V.Narayana Murthy, learned counsel for the applicant contends that the applicant has been illegally held up at the stage of EB presumably on the ground that disciplinary proceedings were being initiated against him. He drew our attention to Office Memoranda dated 3.11.58 and 31.8.1960 issued by the Ministry of Home Affairs which have also been referred to in the application in which it was stated that ^{it was} only where a prima facie case against an official has been established that the sealed cover procedure should be followed.

P. Srinivasan

The applicant was due to cross the EB on 1.12.77. The chargesheet commencing disciplinary proceedings was issued to him only on 28.3.78. Therefore, there was no justification in adopting the sealed cover procedure to deny the applicant the benefit of crossing the EB from 1.12.77 as has been done here.

3. Sri M.S.Padmarajaiah opposed the contentions of Sri Narayana Murthy and contended that the sealed cover procedure had been correctly followed. He produced the records of the department in this connection.

4. We have perused the records produced by Sri Padmarajaiah. We find that the Departmental Promotion Committee(DPC) held on 13.12.77 to consider the crossing of EB by the applicant and others had specifically recorded a note that on the basis of investigation already completed, the issue of a "charge memorandum" to the applicant was "under process". We are satisfied that a prima facie case against the applicant had been made out at that time and that therefore the sealed cover procedure was rightly adopted. The applicant's prayer for issue of direction that he should be allowed to cross EB from 1.12.77 is therefore rejected.

5. Sri Narayana Murthy next contended that the immediate junior of the applicant had been confirmed from a much earlier date than the applicant and when that took place, no disciplinary proceedings had been initiated against the applicant. He therefore contended that if the confirmation of the applicant had been withheld because of the sealed cover procedure, the authorities should be directed to confirm the applicant from the date his junior was confirmed.


6. Sri Padmarajaiah refutes the contentions of Sri Narayana Murthy and supports the action of the authorities in this regard. He also produced the records of the DPC held in 1978 to

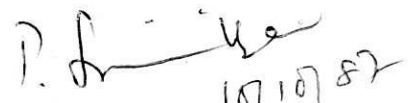
P. L. - 62

consider confirmation of a large number of Inspectors of Central Excise. 87 persons senior to the applicant were considered for confirmation along with over 350 junior to him. At the time the meeting was held i.e. in 1978, disciplinary proceedings had already been initiated against the applicant and therefore the DPC decided to adopt the sealed cover procedure in this case. We see nothing wrong in this and we therefore reject the applicant's prayer in this behalf.

7. Sri Narayana Murthy drew our attention to the fact that the applicant had challenged the punishment imposed on him as a result of the disciplinary proceedings referred to above, and that in A.No.1839/86, this Tribunal had directed the disciplinary authority to give the applicant a personal hearing and then pass a fresh order. If the applicant succeeds in convincing the disciplinary authority that he does not deserve any punishment, the applicant would be entitled to cross the EB as well as to confirmation from the date on which he had been put in the sealed cover for both purposes. He therefore prays that liberty be allowed to the applicant to come back to this Tribunal if, in the event of his being exonerated in the disciplinary proceedings, the authorities still do not allow him to cross the EB from 1.12.77 or fail to give him confirmation retrospectively from the date his junior was confirmed.

8. In view of what we have stated earlier, this application has to be dismissed. We therefore dismiss this application. It goes without saying that in the event of the disciplinary proceedings now pending ending in the applicant's favour and the applicant's request for retrospective confirmation and crossing of EB not being allowed, he would be free to come to this Tribunal to seek such relief as he may consider necessary. With these observations, we dismiss the application. Parties to bear their own costs.


MEMBER(J)


MEMBER(A) 10/10/87