

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(3)

NEW BOMBAY BENCH

O.A. No. 438 of 1991
T.A. No.

198

DATE OF DECISION 06.01.1992

Shri Damien Fernandes

Petitioner

Shri F. Rebello

Advocate for the Petitioner(s)

Versus

The Collector of Customs

Respondent

and 48 others

Advocate for the Respondent(s)

Shri P.M. Pradhan

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The Hon'ble Mr. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. A.B. Gorthi, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,

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Registration O.A. No. 438 of 1991

Shri Damien Fernandes Applicant.

Versus

The Collector of Customs,
Customs House, Ballard Estate,
Bombay and 48 others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

By means of this application, the applicant who is a Preventive Officer, Customs House, Mormugao, Marbour-Goa has prayed for quashing and setting aside the promotions made by the office orders dated 5.2.1990, 20.2.1990 and 18.3.1991 issued by the respondents and also a direction & may be issued to the respondents to appoint the applicant to the post of Superintendent of Customs (Preventive) from 5.2.1990 and/ or such other date and pay him the back wages from that date till his appointment. The applicant was appointed as Preventive Officer in July, 1972 and thereafter, he has completed eight years of regular service in July, 1980 and as such he became eligible for promotion to the higher post i.e. Superintendent of Customs (Preventive). For the said post Article 309 of the Constitution of India has been framed and under which a selection is made by the Departmental Promotion Committee. Under the Rules, the Departmental Promotion Committee is to consist of four persons;

(a) Principal, Collector of Customs and Central Excise, or in his absence Director General of Inspection of the Central Excise as the Chairman;

(b) Collector/Collectors concerned as Members;

(c) Any other Director under the Central Board of Excise and Customs, where cadre comprises of one Custom House; and

(d) Deputy Collector (Personnel and Establishment) of the cadre Controlling the Custom House.

The applicant states that Bombay and Goa are clubbed together and a common seniority list prepared for promotion to the post of Superintendent of Customs and Central Excise (Preventive). There is a separate Collector for the Goa Collectorate and a separate Collector for the Bombay Collectorate, but promotions to be made from the said combined seniority list. The Government of India has issued various notifications from time to time in the matter of considering the C.Rs. for the purpose of promotion vide Administrative instructions issued by the Department of Personnel and Training vide O.M. No.F2201/5-86-Estt (D) dated 10.3.1989 and MR (Dr).F. No.12/50/89-Coord, dated 3.4.1989 (Circular No.70/89), promotions to Group-B posts has to be based on the Bench Mark of 'good'. In other words, all the officers who are considered good and above, have to be selected in the order of seniority irrespective of the fact that some of them have CRs which are 'very good' and 'outstanding'. The applicant's case is that he has never been favoured ^{with} any adverse remark nor he has been warned or any punishment imposed, and his work has been outstanding and as such, he must have been automatically included in the Bench Mark 'good'. Although an enquiry had been initiated against him on 13.7.1988 in respect of some incident which took place in the month of November, 1984

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and as the same was delayed, the applicant filed a writ petition ~~against~~ ^{for} the earlier disposal of the enquiry proceedings. The enquiry officer gave his report dated 14.12.1990 exonerating the applicant. The collector of Customs by his order dated 22.2.1991, accepted the findings given in the inquiry officer's report and held that no charges had been proved against the applicant. Now it seems that thereafter the D.P.C. met some time in March 1991 for filling the posts of Superintendent of Customs (Preventive). As per allegations of the applicant, his case was not placed before the D.P.C. purportedly based on the inquiry that had been held against the applicant, nor was the sealed cover procedure followed. At any rate, as submitted that at the time the D.P.C. met, there were no disciplinary proceedings against the applicant and he was fully exonerated of the charges. Yet, he was not appointed in respect of one vacancy of 1989 and 2 vacancies of 1990 to which the respondent nos. 7 to 49 have been appointed in the year 1991, and as per allegations of the applicant, instead of considering the CRs of 5 years, it appears that the CRs of 8 years have been considered and that is why he has wrongly been deprived of the said promotional posts.

2. The respondents have refuted the claim of the applicant and have pleaded that the Departmental Promotion Committee took place on 20.1.1990, 18.6.1990, 15.3.1991 and 26.6.1991, and the case of the applicant was considered by the committee for promotion to the cadre of Superintendent of Customs. In the first two meetings i.e. on 20.1.1990 and 18.6.1990, the disciplinary case was pending against

the applicant. Therefore, in terms of Ministry's order dated 12.1.1988, the findings of the D.P.C. held on 20.1.1990 and 18.6.1990 were placed in sealed cover. Now when it was opened, it was found that the D.P.C. has graded the applicant as 'average' as such he could not be promoted. A telex message dated 7.3.1991 was received by which it was informed that the applicant was exonerated of the charges and the ~~case~~ of the applicant has been considered by ~~whole~~ ^{holding} the D.P.C.s. The D.P.C. has again recorded the applicant as 'average' on the basis of his service record and on the basis of his eight years CRs, and as such, the applicant could not be promoted. In para-16 of the written statement, the respondents have stated that in terms of para-2.2.1(b) of the O.M. date 10.3.1989, it is laid down that the D.P.C. should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. It has been further pleaded that the respondent no.4 was appointed in the year 1989 and the respondent nos. 4 to 49 were promoted against the vacancies which were in existence during the year 1990-91. So far as the constitution of committee is concerned, it has been stated that instead of Deputy Collector of Customs in view of the departmental instructions, the Additional Collector of Customs was member of the said committee. The learned counsel for the applicant contended that the constitution of the selection committee was defective in as much as he did not include the Collector of Customs of the Goa Collectorate and further the requirement was that a Deputy Collector of Customs should be Member instead of Additional Collector was made Member because of an Executive

Instructions by this Government which had no power to supercede the statutory rules in this behalf which provides only for Deputy Collector of Customs. It was contended that Item-1 is Collector of Customs/Collectors concerned. The zone of consideration includes more than one collectorate and all the Collectors concerned should be there. Now the word collector has been used in singular and after oblique Collectors concerned has been used, which may mean that one who was setting earlier in respect of one collectorate can be substituted by collector of another collectorate, but it does not mean that the number can be increased from 4 to that of 5. The word collectors which has been used in plural is followed by the word collector in singular. This may mean that any collector out of concerned collectors can be Members of the said committee which only to scrutinise the CRs. Now so far as the Additional Collectors of Customs are concerned, no specific plea has been raised by the applicant in his application nor the respondents were called upon to give any reply to the same. It has been contended that under the Rules, there is no post of Additional Collector and as a matter of fact, who gave the designation of Additional Collector and Deputy Collector and some higher emoluments and more powers but under the rules, their status is that of Senior Deputy Collector and not more than that. We do not find any flaw with this argument and accordingly we are of the view that the constitution of the selection committee was not defective.

3. So far as the grading is concerned, it was in the exclusive jurisdiction of the selection committee.

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If the selection committee after grading did not find the applicant to be of category of outstanding ^{or} and very ^{or good} good, this Tribunal can not re-assess the same or in ^{with} sitting judgment over the assessment made by the said departmental promotion committee. Now the assessment from the Departmental Promotion Committee is not followed by any reason which could give an opportunity to the Tribunal to re-scrutinise as to what are the reasons for making a particular assessment or making a comparative assessment in a particular manner. In the absence of any allegations of malafides or bias, it will not be possible for the Tribunal to interfere ^{with} in the assessment so made by the D.P.C. but it appears that there is force in the contention which has been raised on behalf of the learned counsel for the applicant that during the period, the disciplinary proceedings were pending against the applicant, his CR was not filled in and a reference to the same was made in the light that his eight years CR was considered. As a matter of fact, any reference to the disciplinary proceedings should have been expunged and it is only thereafter his record should have been considered and accordingly if his record was considered with an entry during the period, the applicant was facing the disciplinary enquiry in which obviously, no assessment of his work was given, the review D.P.C. will be convened which will ~~be considered~~ the case of the applicant in this light ignoring all together any entry regarding the pendency of the disciplinary proceedings and in case, no entry in respect of his work during this period has been given, then will take it ^{as a} the case of no entry and will decide it in accordance ^{with} law. The application is disposed ^{of}

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of with the above observations. Parties to bear
their own costs.

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Member (A)

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Vice-Chairman.

Dated: 06.01.1992

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