

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL 2
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.370/91.

Shri Bagwan Teckchand Gursahaney.

... Applicant.

V/s.

Union of India & Another.

... Respondents.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri T.C.Reddy.

Appearances:

Applicant by Mr.G.K.Masand.
A Junior Representative for the
the respondents from Respondens
Office.

Oral Judgment:-

(Per Shri M.Y.Priolkar, Member(A)) Dated: 25.7.1991.

The applicant in this case, while serving as Assistant Collector of Customs at Surat, was suspended in view of certain alleged irregularities in conducting some auctions. Later on, on his representations, the suspension order was revoked on 9.1.1990. In the meanwhile the Supreme Court had directed ^{by interim order dated 13-8-1990} the department to fill up 157 vacant posts of Deputy Collectors of Excise and Customs on ad hoc basis in pursuance of which a departmental promotion committee met in November, 1990 for the purpose of making these selections. The applicant apprehended that the DnC would be following the Sealed Cover Procedure in his case and represented to the Department stating that the adoption of Sealed Cover Procedure when a charge sheet had not been served on the applicant would be illegal and he had also referred in this connection to a Judgment of the Principal Bench dt. 31.8.1990 in the case of A.K.Singhal v. Union of India and Another (O.A. 307/90) and B.D.Bhagat v. Union of India & Another (O.A.314/90). In this Judgment the

Principal Bench had referred to the principle enunciated by the Supreme Court that the consideration of promotion of persons against whom charge has been framed in the Disciplinary Proceedings or charge sheet has been filed in Criminal case may be deferred till the proceedings are concluded. The Principal Bench has held the view that it follows from this principle that where the charges have not been framed in Disciplinary Proceedings or charge sheet has not been filed in Criminal case, deferring the promotions is not reasonable and appropriate and also directed that the respondents shall open the sealed cover in respect of the aggrieved employees and promoted them from the date their juniors were promoted, if they had been found fit for promotion by the DPC, with all consequential benefits on ad hoc basis in accordance with the interim order of the Supreme Court passed on 16.11.1987.

2. The learned counsel for the applicant has also referred to a very recent judgment of the Supreme Court in the case of New Bank of India v. N.P. Sehgal and another (1991(1) SLR 123) dt. 15.2.1991 where the Supreme Court had held that till Disciplinary action is in process or initiated, the officer concerned against whom allegation of misconduct might be made can neither be excluded from consideration towards promotion if he is entitled to be considered otherwise nor can the promotion be denied to him.

3. When this application had come up for admission hearing before us on 26.6.1991 we had directed issue of show cause notice to the respondents as to why the application should not be admitted, and we had also asked them to bring the complete relevant record today as the application was likely to be decided finally on the date specified i.e. today.

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In spite of this notice, a junior representative of the department is present today, who only states that their advocate has not come today. Since this case is covered by a Supreme Court Judgment, we do not think it necessary to adjourn this case any further and we are inclined to pass the same order in this case as that of the Principal Bench in the identical case cited above which was under the same respondents i.e. the Central Board of Excise & Customs of the Ministry of Finance. Accordingly, we direct that the respondents shall open the sealed cover, if any, in respect of the applicant and promote him from the date his junior was promoted to the rank of Deputy Collector of Customs if he had been found fit for promotion by the D.C. with all consequential benefits on ad hoc basis in accordance with the interim order of the Supreme Court passed on 13-8-1990 (pp 63-67 of the paper book) 4/16.11.1987. There will be no order as to costs.

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T. C. Reddy
(T.C. REDDY)
MEMBER (J)

M. Y. Prickar
(M.Y. PRICKAR)
MEMBER (A)

BSM
5.8.1991.