

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 22 AUG 1994

APPLICATION NUMBER:

1109 of 1994.

APPLICANTS:

Sri.G.V.Bhat, v/s. Chairman, Central Board of Customs and
Central Excise, New Delhi and another.
To.

RESPONDENTS:

1. Sri.N.S.Rajanna, Advocate,
No.127, 17th Cross, 10th Main,
Mallewaram, Bangalore-560055.

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 5.8.94.

Issued on

23/8/94

R.

of

Se Se Shauhar 22/8
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

OA NO. 1109/96

Sh. G. V. Bhat, ² V/s. Chairman, Central Board of Customs, New Delhi

Date	Office Notes ^{Da}	Orders of Tribunal
		<p>PKS(vc)/TVR(na)</p> <p>5-8-1994.</p> <p>Case called twice. Applicant and his Counsel absent. Applicant not interested.</p> <p>Dismissed for non-prosecution.</p> <p>Sol- II (A)</p> <p>Sol- VC</p> <p>TRUE COPY</p> <p>Re Shambhu 2218 SECTION OFFICER CENTRAL ADMINISTRATIVE TRIBUNAL ADDITIONAL ZENCH BANGALORE</p> 

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

Dated. 28 FEB 1997

APPLICATION NO. 1109 of 1994.

APPDICANT(S) : G.V.Bhat,

V/s.,

RESPONDENTS : The Chairman, Central Board of Customs
and Central Excise, New Delhi & Others.,

To.

1. Sri.G.V.Bhat, Deputy Office Superintendent-L,I,
Auditor in Internal Audit Party-I, Office of the
Assistant Collector of Central Excise,
Mandi Mohalla, Mysore-570 021.
2. Sri.G.Shanthappa, Additional Central Govt.
Standing Counsel, High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38.

-x-x-x-

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above stated applicatio(s)
is enclosed for information and further necessary action.
The Order was pronounced on 20-02-1997.

for *le*
Deputy Registrar
Judicial Branches.

*gm**

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH:BANGALORE**

O.A. NO. 1109/94

DATED THIS THE TWENTIETH DAY OF FEBRUARY, 1997

SHRI T.V. RAMANAN, MEMBER(A)

SHRI G. RAMAKRISHNA RAO, MEMBER(J)

V₂

1. The Chairman
Central Board of Customs
and Central Excise
Govt. of India, New Delhi.
2. The Collector of Central
Excise, Head Quarters Office
Near G.P.O., Bangalore.
3. G. Rajalakshmi
Head Quarters Office
Bangalore. Respondents

(By Shri G. Shanthappa, A.C.G.S.C. for R-1 and R-2) —

Q R D E G

SHRI T.V. RAMANAN, MEMBER(A):

The applicant G.V. Bhat, has sought for the following reliefs:-

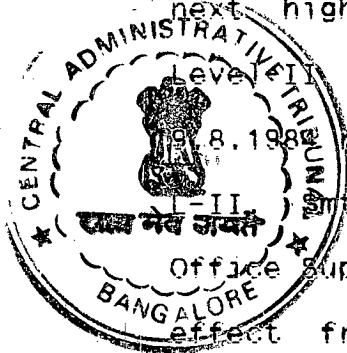
1) The Honourable Tribunal be pleased to issue an order directing the respondent no.2 to amend the seniority list of DOS L-I which is at Annexure-I by placing the applicant between Smt. R. Vasanthkumari and Smt. Rajalaxmi who are at Sr. Nos. 25 & 26 and thus declaring the Annexure-AI as an illegal arbitrary, violative of the articles 14,16(1) of Constitution and para 6 to 9 of Annexure-7.

11) To give the benefits of promotion as Administrative Officer with effect from 29.6.1993 since the applicant will retire on 31.8.1994 on superannuation and it marked at Annexure-11.

iii) To fix the pay of Administrative Officer on promotion giving with retrospective effect after giving monetary benefits in fixing the pay in the scale of Office Superintendent as in the case of Smt. G. Rajalakshmi (now Admn. Officer).

iv) To grant of refund of cost of expenditure of the application.

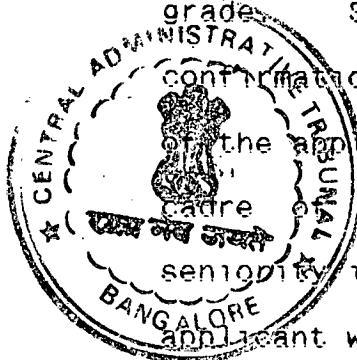
2. According to the applicant, he had joined service as LDC in the New Customs House, Bombay on 25.6.1956 and was promoted as UDC on 17.1.1968. At his request he was transferred from the New Customs House, Bombay, to the Central Excise Divisional Office, Mysore, which he joined on 16.7.1973. His seniority as UDC in the Department was fixed as on 1.1.1977 at sl.no.69 and the seniority of B.L. Patil, his junior, was shown at sl.no.71. In his Annual Confidential Report (ACR for short) for the period ending 31.3.1977 there were some adverse entries. He represented, but the same was rejected. However, on submission of a representation, the President of India, expunged 2 out of the 4 adverse remarks but the other 2 remarks were retained. Further, in the disciplinary proceedings initiated under the CCS (CCA) Rules, 1965, a penalty of censure was imposed on him in 1979. Shri B.L. Patil and Smt. G. Rajalakshmi, both juniors to him, were promoted to the next higher grade of Deputy Office Superintendent, Level-II (DOS L-II, for short) on 20.10.1983 and 9.8.1982 respectively but he was not promoted as DOS L-II. Smt. Rajalakshmi was further promoted as Deputy Office Superintendent, Level-I (DOS L-I for short) with effect from 4.1.1990 but the applicant came to be promoted from 2.3.1992 only. Smt. Rajalakshmi was subsequently promoted as Office Superintendent and later



was at sl.no.71 in the seniority list as on 1.1.1977 of officiating UDCs continued to remain in the officiating list of UDCs while B.L. Patil ^{Confirmed earlier} came to be shown above him in the seniority list of permanent UDCs. The applicant came to be confirmed only with effect from 1.3.1980. Because of this position, B.L. Patil, his senior, secured promotion to the cadre of DOS, L-II in 1983 itself. Later, B.L. Patil took voluntary retirement with effect from 1.12.1988. As regards Smt. G. Rajalakshmi, whose seniority above him in the seniority list of DOS, L-I as on 1.1.1993 (Annexure-A1), the applicant has challenged, the said respondents' contention is that Smt. Rajalakshmi was working as a Stenographer and was promoted as DOS, L-II on 9.8.1984. During the year 1984, the posts of DOS, L-II were selection posts and all UDCs/Stenographers having 5 years of service in the grade were eligible for consideration for promotion (Stenographers should qualify in the Departmental Promotion Examination). Further, promotions were made from the grade of UDCs and Stenographers in the ratio of 8:1 as per instructions of the Central Board of Excise and Customs contained in their letter no.F.No.A12018/8/81-Ad.III-E dated 27-2-1982 and based on these instructions, the DPC was to select candidates from separate lists of UDCs and Stenographers upto the prescribed quota. The officers who came into the zone of consideration were considered for promotion. The select panel was to be arranged in a consolidated order of merit for determining inter se

as Administrative Officer with effect from 29.6.1993 but the applicant continued to remain as DOS L-I. He, has, therefore, sought a direction to respondent no.2 to amend the seniority list of DOS,L-I as on 1.1.1993 available at Annexure-A1 by placing the applicant just above Smt. Rajalakshmi and also to grant him the benefit of promotion as Administrative Officer with effect from 29.,6.1993 when Smt. Rajalakshmi came to be promoted as Administrative Officer.

3. Respondents 1 and 2 in their reply statement have contended that since the applicant was transferred from the New Customs House, Bombay to an office in Mysore, under the Collectorate of Central Excise and Customs, Bangalore, at his request, he was treated as per instructions as a new entrant in the grade of UDC and as such, his confirmation in the grade of UDC became necessary. The case of the applicant for confirmation was considered at the DPCs held on 8.11.1978 and 27.9.1979 and he was not found fit for confirmation due to presence of adverse entries in his ACR for the period 1976-77. However, his juniors were confirmed in the grade. Since as at the relevant point of time confirmation was linked with seniority, non-confirmation of the applicant and confirmation of the juniors in the cadre of UDC resulted in the applicant losing his seniority in the grade of UDC. It is stated that the applicant who was at sl.no:69 vis-a-vis, B.L. Patil who



seniority. During 1984, DPC was held for 12 vacancies in the posts of DOS, L-II. Smt. Rajalakshmi came into the zone of consideration and on the basis of merit she was promoted to the grade of DOS, L-II against the prescribed quota of Stenographers. However, as the applicant figured at sl.no.106 in the seniority list of UDCs as on 1.1.1984, he could not come into the zone of consideration for ^{U. D. C.s} ~~stenographers~~ to be considered by the DPC. It was only in 1989 the applicant came to be promoted as DOS L-II. Subsequently, on the basis of her seniority in the grade of DOS, L-II, Smt. Rajalakshmi was promoted to the grade of DOS, L-I with effect from 4.12.1990 where as the applicant had to wait for such promotion till 2.3.1992. Later Smt. Rajalakshmi was promoted to the grade of Office Superintendent and then as Administrative Officer as and when her turn came up. Respondents 1 and 2 have also stated that the applicant retired from service on attaining the age of superannuation with effect from 31.8.1994 before his chance came for promotion to the grades of Office Superintendent and above. In an additional reply statement filed on behalf of the respondents-1 and 2, it is stated that the application is liable to be dismissed for the reason that the applicant had failed to mention about the dismissal of O.A. no.604/1989 filed by him against the respondents in respect of issues which have relevance to this application and also due to application of the principles of res judicata. To this, the applicant has filed a rejoinder denying suppression

of any information and also levelling certain allegations that his case was not properly considered by the Tribunal while disposing of O.A. No.604/89(F).

4. We gave ample opportunity of hearing to the applicant who appeared in person as also the Additional Central Government Standing Counsel representing respondents 1 and 2.

5. In the seniority list of DOS, L-I as on 1.1.1993 (Annexure-I) applicant's name figures at sl.no.57 while the name of the 3rd respondent, G. Rajalakshmi figures at sl.no.26. That this seniority list is a provisional one is evident from what is inter alia, stated in para-1 of the letter dated 28.6.1993 circulating the said seniority list. The relevant portion is reproduced below:

"It may please be impressed upon them that they should verify the correctness of the particulars furnished therein and report the discrepancies, or omissions, if any, through proper channel within one month from the date of receipt of the seniority list."

There is nothing on record to show whether the applicant had a response to the above, represented within the stipulated period against his being placed below the 3rd respondent in the seniority list. The applicant is silent in this respect. In any case, from a perusal of the averments made on behalf of respondents 1 and 2, not denied, it is clear that the 3rd respondent had secured promotion to the grade of DOS, L-II on a regular basis

and later to the grade of DOS, L-I on a regular basis much earlier than the applicant. She was promoted to DOS, L-I on 9.8.1984 while the applicant secured such promotion only on 12.6.1989. Further, the 3rd respondent was promoted as DOS, L-I on 4.1.1990 while the applicant was promoted to that grade on 2-3-1992 only. Reasons as to why and how the 3rd respondent got the promotion to DOS, L-II earlier than the applicant have been stated by respondents 1 & 2 in their averments mentioned in para-3 above. That being so, she was senior to the applicant even in the grade of DOS L-II. Further, as seen above, the 3rd respondent was promoted on a regular basis to the grade of DOS, L-I earlier than the applicant. Rightly therefore, she has been assigned ~~higher~~ higher seniority than the applicant in the seniority list of DOS, L-I as on 1.1.1993.

6. In the course of arguments the applicant was blaming his non confirmation as UDC in time owing to the adverse remarks contained in the ACR of 1976-77. Alleging that proper procedure was not followed in communicating the adverse remarks, in considering his representation and later in communicating the orders on his representation the applicant argued that the adverse remarks must go paving way for a review of his late confirmation as UDC which would enable him to secure promotions as DOS, L-II and DOS L-I with effect from the dates earlier than the dates on which he was promoted to those grades and also secure him further promotion prior

to the date of his retirement, i.e., 31.8.1994. We are unable to consider the contentions of the applicant in this regard. In the first place, he has sought no relief in this application for expunction of the adverse remarks contained in his ACR for 1976-77 or for his confirmation as UDC from a date prior to 1.3.1980. Secondly, and more importantly, the issues regarding the adverse remarks and his confirmation as UDC earlier than on 1.3.1980 stand decided by a Division Bench of this Tribunal on 7.12.1990 in O.A.604/1989(F). ^{That is a binding decision.} We consider ~~✓~~ it relevant to reproduce below para-5 of the order in that O.A.

" Coming to his non-confirmation while his juniors were confirmed w.e.f. 1977, the applicant submitted that the DPC has adopted a wrong procedure by considering the adverse remark which was not communicated to him in time and the representations against which was not disposed of. We have gone through the DPC proceedings in question. It is seen that he was held to be not fit for confirmation because of the adverse entries in the ACR and also because a disciplinary proceeding was pending against him. After the President expunged a part of the adverse entries, the DPC met for review of the panels dated 8.11.1978 and 27.8.1979 and in view of only the partial expunction of the adverse remarks in the ACR for the period ending 31.3.1977 as well as of the pendency of the disciplinary proceedings and the penalty imposed thereafter even in the review DPC, the applicant was found not fit for confirmation. Going through the proceedings of the review DPC, we do not find any infirmity in their findings. Since the applicant was not confirmed before his juniors were confirmed, his position in the seniority list went down which is only natural consequence of his non-confirmation earlier. Then the further question argued by Shri Bhat is that the adverse entries which has been communicated to him after a period of six months have to be completely ignored and that they should not have been taken into account for the purpose of confirmation. He invited our attention to

paragraph 138-F of Central Excise Circle and Division Office Manual wherein it is stated that adverse entries should be communicated to the Officer concerned only once in a year and within 6 months after the close of the year to which the reports relate. He argued that the adverse entries not communicated within six months should be ignored and should not have been considered for disqualifying him for confirmation in the year 1978. If the applicant was found unfit for confirmation on the ground of adverse entries which should not have been looked into than the grievance of the applicant arose in the year 1978 and when his representation against supersession was finally disposed of in October, 1982. In that view of the matter, we cannot go into that question at this late stage. Further, the direction for the adverse entries should be communicated within a period of six months is intended to alert the Reporting and Reviewing Officers, so that they would complete the procedure relating to ACR in time. These rules are directory and if for some reason there is slight delay in communication it does not mean that the entire adverse remark should vanish from the ACR. Further, in 1978 disciplinary proceedings were pending against the applicant and in 1979 in the disciplinary proceedings a punishment of censure had been awarded to him. Further, the President has expunged only 2 adverse remarks in the ACR of the applicant for the year ending 31.3.1977 whereas 2 other adverse entries have been allowed to stand. No reason as to why these adverse entries should not stand excepting that they were communicated to him 2 months later than the date on which they should have been communicated has been either averred in the application or argued before us. As stated earlier, a delay of 2 months in communication of the adverse remarks or a slightly longer time taken for disposal of an appeal cannot have the effect of washing away the adverse remarks from the ACR. Therefore even while the review DPC was held there were 2 adverse remarks for the relevant period and a disciplinary proceedings was pending in the year 1978. So we do not find any merit in the argument of the applicant that he was entitled to be confirmed along with his juniors. The DPO proceedings for the years 1986 onwards also have been produced. We perused these proceedings and found that to the selection post of D.O.S L-II, he was not selected because he did not get the required grading. Shri BANGALAPATI who was junior to the applicant in the cadre of U.D.C. came to be promoted earlier because he became senior to the applicant by way of his earlier confirmation. So in that way also, there is no merit in the claim of the applicant that he should be given notional

promotion and confirmation w.e.f the respective dates on which his junior Shri Patil was confirmed and promoted. On a consideration of the facts and circumstances we are of the view that there is no legitimate grievance for the applicant."

We are thus precluded from going into those issues while deciding this application. The applicant admits that he neither filed a review petition before this Tribunal nor preferred a Special Leave Petition before the Supreme Court against that order.

7. We have already seen that the lower seniority of the applicant in the grade of DOS L-I is due to his promotion to that grade much later than that of the 3rd respondent and that in turn was due to his lower seniority in the grade of DOS L-II, vis-a-vis, the 3rd respondent. His late promotion to the grade of DOS, L-II was itself due to his delayed confirmation for reasons which are on record. Thus, the applicant has no case to seek for a higher seniority, vis-a-vis, the 3rd respondent in the grade of DOS L-I. As a sequel, he also does not have a case for promotion as Administrative Officer with effect from 29.6.1993, the date on which the 3rd respondent stood promoted as

Administrative Officer. He is also not entitled to any other relief.



It is unfortunate that the applicant in this application has not said a word about the adverse decision that was given in O.A.no.604/1989(F). He has not approached this Tribunal with clean hands. We are also constrained to the oblique manner in which he has

found fault with the order of this Tribunal in O.A.604/1989(F) as in his rejoinder to the additional reply statement. We cannot approve of this kind of allegations. However, we propose to leave the matter at



In view of the discussions above, we hold that this application fails and we dismiss it accordingly.
No costs.

Sd/-

(G. RAMAKRISHNA RAO)
MEMBER(J)

Sd/-

(T.V. RAMANAN)
MEMBER(A)

Mr.

TRUE COPY

May 28/97

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 038.

Review Appln.No.93 of 1997 in

Dated:

3 JUL 1997

APPLICATION NO. 1109 of 1994.

APPDICANT(S) : G.V.Bhat,

V/s.,

RESPONDENTS : Chairman, Central Board of Customs and
Central Excise, New Delhi and others.,

To.

1. Sri.G.V.Bhat,
House No.8, 2nd Stage,
Gayathripuram,
Opp: Church P.O.,
MYSORE- 19.
2. Sri.G.Shanthappa, Addl.CGSC,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by
Central Administrative Tribunal, Bangalore-38.
-x-x-x-

A copy of the Order/Stay Order/Interim Order,
passed by this Tribunal in the above stated applicatio(s)
is enclosed for information and further necessary action.
The Order was pronounced on 30-06-1997.

Shay
for
Deputy Registrar
Judicial Branches.

**In the Central Administrative Tribunal
Bangalore Bench
Bangalore**

ORDER SHEET

Review Application No., 93 of 1997
in OA No. 1109/94

Applicant.

Respondent

GV Bhat

C'man. Com. Bd of Cus & Com. Excise & Ors

Advocate for Applicant

Advocate for Respondent

In Person

Date

Office Notes

Orders of Tribunal

I have considered the
R.A. There is no error
apparent on the face of
it need to warrant
review of the order in
OA 1109(h) decided on
20-282. Hence the
R.A. is dismissed

$$\begin{array}{c}
 \text{Sd-} \\
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 \text{30.6 ft}
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TRUE COPY

Shyam 03/7/97
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore