

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1006/93

Transfer Application No: --

DATE OF DECISION: 16.12.95

M.N. Paranjape _____ Petitioner

Mr. H.K. Maingi _____ Advocate for the Petitioners

Versus

U.O.I. & Ors. _____ Respondent

Mr. E.P. Badri Narayanan _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri P.P. Srivastava, Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. HEGDE)

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M (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NO: 1006/93

(8)

18th this the Friday day of October 1995

HON'BLE SHRI B.S. HEGDE, MEMBER(J)
HON'BLE SHRI P.P. SRIVASTAVA, MEMBER(A)

M.N. Paranjape
C/o.H.K.Maingi,
Advocate, A/28,
La Campala Colony,
Panaji 403 001.

(By Advocate Shri H.K.Maingi) .. Applicant

-versus-

1. Union of India
through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
2. The Secretary,
Central Board of Excise &
Customs,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
3. The Principal Collector of
Customs,
New Customs House, Ballard Estate,
Bombay - 400 038.
4. Shri A.J.H.Cordozo,
Superintendent of Customs,
Marmagoa Custom House,
Goa.
5. Shri J.S.P.L.Fernandes,
Superintendent of Customs,
Bombay Custom House,
New Custom House, Ballard Estate,
Bombay.

(By advocate Shri E.P.Badri Narayanan) .. Respondents

ORDER

(Per B.S.Hegde, Member(J))

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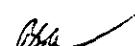
Heard Mr.H.K.Maingi for the applicant and Mr.Badri Narayanan for the respondents. In fact the matter was heard at Panaji on 17-10-1995. After hearing both the counsel and perusal of the pleadings it was found ~~that~~ perusal of service record of the applicant and respondents No.4 & 5 and DPC records of the applicant and respondents No.4 & 5 were necessary and the official respondents were directed to produce the same at Bombay. Accordingly Shri Badri Narayanan counsel for the respondents brought the records on 12-12-1995 and the case was reserved for orders.

2. The applicant is a Preventive Officer in the Customs & Excise Department and he is aggrieved by the DPC recommendation to the post of Superintendent from Preventive Officer by selection and he states that though he is senior in the Preventive Officers cadre he has been superseded by the DPC for the selection of Superintendent which should be quashed and set aside. Those who have completed 8 years of service in the Preventive Officers cadre are eligible to be considered for the post of Superintendent of Customs. In this connection he has annexed seniority list of Preventive Officers wherein applicant's name was shown at Sr.No.99 whereas respondents No.4 & 5 were at Sr.No.104 and 117 respectively. Both the respondents were junior to him in the said cadre but they have been promoted to the post of Superintendent of Customs which is not valid. The DPC for promotion to the cadre of Superintendent of Customs was held on

20-1-1990 and they have considered the CRs of respective eligible candidates from 1981 to 1988. At the time of consideration there were 21 existing and 2 anticipated vacancies available and they called 69 names for consideration. In the consideration zone there are 22 P.Os who have been promoted as ad-hoc Appraiser in the year 1983 and subsequently regularised in the year 1989 were figured in the consideration zone. Except one officer nobody has opted for the post of Supdt.(P). The bench mark was at least 4 overall gradings of Very Good in the last eight years for 'Good' and over seven for 'Very Good'; three or less for 'Average'.

3. We have perused the DPC and service records of the applicant as well as respondents No.4 and 5. On perusal, we find that the applicant's overall performance was graded as 'Average' whereas respondents No. 4 & 5 was graded as 'Good'. There is no infirmity in ^{the} assessment made by the DPC or in the ACRs of the respective parties.

4. Respondents in their reply denied the contention of the applicant that he has been superseded without any valid reasons. The post of Superintendent is to be filled by DPC by selection and not by seniority alone. DPC has rightly evaluated the service of the applicant as well as Respondents No. 4 & 5. Respondents No.4 & 5 have been given better grading taking into consideration the overall performance. As stated earlier



the DPC has considered eight years CR from 81 to 88. After perusal of the service records the DPC fixed bench marks ^{and} at least 4 overall gradings of Very Good in the last eight years for Good and over seven for Very Good; three or less for Average. On the basis of last eight years service records of the applicant the DPC found him 'Average' as his overall grading of Very Good was less than four during the eight years. It is open to the DPC to decide its own method and procedures for objective assessment of the suitability of candidates who are to be considered by them as per Govt. of India DOP Memo dt.

10-3-89. There was no adverse remarks in the ACRs of the applicant and hence the question of communication about the same is not required. Gradings given in the ACRs of an officer are totally different to that of given by DPC at the time of promotions. The two gradings are not one and the same thing.

5. It may be noted that the applicant's contention is that he should have been promoted in the year 1990 before respondents No. 4 & 5 were promoted. As stated earlier it is not based on seniority alone the promotion is being effected but on overall performance and through selection. Seniority alone is not criterion for the promotion to the next higher grade. Concept of supersession is relevant in the context of promotion but not in the context of selection. No officer can claim

promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors have been promoted. It is not sufficient that in his confidential reports it is recorded that his services are 'satisfactory'. An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the department to consider the case of the officer. It is only when the process of selection is vitiated on the ground of bias, malafides or any other similar vitiating circumstance other considerations will arise. Nothing is present in the instant case and the applicant has not averred that the decision taken by the DPC is bias except stating that he has been superseded by his juniors. On perusal of the DPC it is found that the DPC consisted of higher officers and they have considered the various merit of the candidates for promotion and then granted promotion on the basis of their overall performance. Needless to mention the applicant himself has been promoted to the post of Superintendent in the year 1993. As promotion to the higher post is not a matter of right it depends upon so many factors by which he could not be promoted in the year 1990 that by itself does not give any cause of action.

6. In result we do not find any merit
in the O.A. and the same is dismissed.

(P.P.SHIVASTAVA)
Member(A)

(B.S.MEGDE)
Member(J)

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