

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 282/93

DATE OF DECISION: 3 /10/2000

Shri B.R.Dubey

Applicant.

In person

-----Advocate for
Applicant.

Versus

Union of India & 3 Ors.

-----Respondents.

Shri V.D.Vadhavkar for Shri M.I.Sethna

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastri, Member(A)

1. To be referred to the Reporter or not? *No*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *yes*

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:282/93
DATED THE 3rd DAY OF OCT. 2000**

**CORAM: HON. SHRI S.L. JAIN, MEMBER (J)
HON. SMT. SHANTA SHASTRY, MEMBER (A)**

Shri B.R. Dubey,
1/B/29 M.H.B. Colony,
Near Ashokwan, Borivali (E),
Bombay.

... Applicant

In person

V/s.

1. Union of India
through, the Chairman of
Central Board of Central Excise
and Customs, North Block,
New Delhi-110 001.
2. Director Preventive Operation
Customs/Central Excise,
Loknaya Bhavan, 4th Floor,
Khan Market,
New Delhi-110 003.
3. Collector of Customs, New
Customs House, 2nd Floor,
Ballard Estate, Bombay - 400 038.
4. Joint Director, Marine
Customs Marine Head Quarters,
16, Arthur Bandar Road,
Hotel Waldrof, 2nd Floor,
Colaba-Bombay - 400 005.

... Respondents.

By Advocate Shri V.D. Vadhavkar for
Shri M.I. Sethna

(ORDER)

Per Smt. Shanta Shastri, Member (A)

The relief sought in this OA is to direct the respondents to consider the applicant for promotion to the post of Preventive Officer/Examiner from the year 1988 with all consequential benefits and to quash and set aside the orders passed by the respondents in declining to consider the applicant

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for promotion. The applicant has further desired to direct the respondents to transfer the applicants cadre to the cadre of UDC or any other suitable cadre protecting his seniority.

2. The applicant is occupying the lone post of Draftsman in the scale of Rs.330-560 which is equivalent to the scale of UDC in the Directorate, Customs House, Marine. The applicant was appointed as Draftsman w.e.f. 5/4/76 after the post was created on 26/8/75. It is the grievance of the applicant that in all these years, he has not been granted any promotion. The applicant who appeared in person submits that in 1988, the Ministry of Finance under the Department of Revenue issued a circular letter dated 22/9/88 communicating the decision that

(ii) Tax Assistants with 2 years service in the grade of with 5 years total service in the grade of UDC and Tax Assistant, if any, taken together will be eligible for promotion to the grade of Preventive Officer/Examiner. Other categories of officers e.g. 2 years service as Tax Assistant or 5 years total service in the grade of UDC and Tax Assistant, if any put together maybe adopted.

3. The applicant finding a ray of hope submitted representation on 4/8/89 to the Collector of customs, Bombay-II to permit him to compete in Preventive Officers departmental examination in the light of the decision given in the circular letter of 22/9/88. He was informed on 22/9/90 that as per the recruitment rules, the feeder cadre for the post of Preventive Offices are UDC/Stenographer and women searchers only. Draftsman is not included as a feeder cadre and therefore the applicant could not be considered for promotion to the post of Preventive Officer. The applicant made further representations. They were all rejected. He was informed that he was not eligible for

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consideration for promotion to the post of Preventive Officer as he was not borne on the cadre of Bombay Collectorate. The applicant submits that though he is holding the post of Draftsman there is not much work of a Draftsman and he has been assigned to do jobs which are normally done by the UDCs. He further states that analogous recruitment rules have been framed for the cadre of Inspector (OG) which includes Draftsman with 7years ~~of~~ service in the list of feeder cadre. In the Collectorate of Central Excise and Customs there are large number of posts of Draftsman but in the Directorate where he is working there is only one post of Draftsman and in the Collectorate of Customs there are no posts of Draftsman. The applicant has no scope for promotion although there is a post of Senior Draftsman which is not a sanctioned post. Thus the applicant is frustrated.

4. The learned counsel for the respondents submitted that the applicant could not be promoted to the post of Preventive Officer because he belongs to a separate cadre as Directorate Customs House, Marine is entirely a different department from that of Customs ~~Department~~ ^{Collectorate}. No common seniority is maintained of the employees working in that department. Also as per the recruitment rules for promotion to the post of Preventive Officers/Examiners the draftsman post is not prescribed as a feeder cadre. On the applicant's claiming promotion to the post of Preventive Officer on the basis of the letter dated 22/9/88 of the Ministry of Finance, reference was made to the Board of Customs and Central Excise. However, it was clarified by the Board that such promotion was available to UDCs/Stenographers and

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women searchers and not for draftsman. Therefore applicant could not be granted promotion to the post of Preventive Officer though it is a fact that the applicant has not received any promotion during his entire career.

5. The applicant stated that he has not been granted ^{even} ~~in situ~~ promotion ~~therefore~~ though the Government of India had introduced such a scheme for all Group 'C' and 'D' staff in the past and Assured Career Promotion scheme was introduced in 1999. The learned counsel for the respondents informs that the department has taken up the issue of granting promotion to the applicant under the Assured Career Promotion Scheme. However, while recommending the same, the respondents have mentioned that the applicant has filed applications in the Tribunal which are pending and therefore the in situ promotion proposal has not been finalised so far.

6. We have heard the applicant as well as the learned counsel for the respondents. The two reasons given for not considering the applicant are that the applicant belongs to a different cadre than the Customs Collectorate of Bombay and the Recruitment Rules do not provide for draftsman as feeder cadre. As regards ~~the~~ the difference in cadre, we find that the Directorate of Customs House, Marine has been established some time in 1974. Though it is a separate organisation, all the same it is under the control of Board for Customs and Central Excise. We have perused the documents relating to the clearance of Efficiency Bar (EB) of the applicant as well as the joining report of the applicant. The applicant also has stated that he has been appointed by the Collector of Customs after his selection being sponsored by the

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Employment Exchange. He was posted under the Captain, Director Customs Marine but the joining report was submitted to the Customs Commissioner. The order of crossing of his Efficiency Bar was passed by Deputy Collector of Customs. We cannot therefore accept that the applicant belongs to a different cadre than that of the Customs. It is evident from the order dated 13/9/91 allowing the applicant to cross the Efficiency Bar that he belongs to the Collectorate of Customs, Bombay.

7. Coming to the recruitment rules for the post of Preventive Officer, it is very clear that the post of draftsman is not included as a feeder cadre for promotion to the post of Preventive Officer. This would have been perhaps because the recruitment rules were framed in 1964, whereas the post of draftsman under the Directorate of Customs House, Marine was created in 1975. Since the Recruitment rules do not include the post of draftsman, the applicant could not be considered for promotion to the post of Preventive Officer unless the recruitment rules are amended. It is not for the Tribunal to give directions for laying down policy or for creation of promotional avenues as these matters fall within the policy making function of the Government. It has been so held in Technical Executive (Anti Pollution) Welfare Association V/s. Commissioner of Transport Department and another reported in 1997 SCC L&S 1186 which has been brought to our notice by the learned counsel for the respondents. We are therefore unable to direct the respondents to grant promotion to the applicant to the post of Preventive Officer.

8. However, Government of India have evolved Assured Career Promotion scheme and the same has been enforced from September, 99

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to provide for promotions to the staff after every 12 years of regular service. As the applicant in this case has put in 12 years of regular service, as claimed by him and not denied by the respondents, he is entitled to promotion to the next higher grade under the Assured Career Promotion scheme. The Learned Counsel for respondents has already stated that the applicants case for promotion under the scheme is already under process for consideration. However, it is pending due to Court cases filed by the Applicant. Applicant admits that besides the present OA, he has filed another OA-411/96 fixed for hearing on 7/11/2000 for giving him promotion as Senior Draftsman ^{It does} ~~is~~ not concerning the Assured Career Promotion scheme.

9. In the facts and circumstances of the case, we therefore direct the respondents to consider the applicant for promotion under the Assured Career Promotion scheme of the Government of India and to complete the exercise expeditiously within a period of two months from the date of receipt of copy of this order. *The OA is disposed of accordingly.*
There will be no costs.

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

S.L. Jain
(S.L. JAIN)
MEMBER(J)

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