

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 839/93

Date of Decision: 10 OCTOBER, 97

Shri Raju Kallappa Hpoli

Applicant.

Mr. M. S. Ramamurthy

Advocate for
Applicant.

Versus

U.O.I. & 3 ORS.

Respondent(s)

Mr. M I Sethna

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

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

(1) To be referred to the Reporter or not? *W*

(2) Whether it needs to be circulated to *W*
other Benches of the Tribunal?

Ramamurthy

V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI 400001

O.A.No. 839/93

DATED : THIS 10th DAY OF OCTOBER, 1997

CORAM : Hon'ble Shri Justice R G Vaidyanatha, V.C.
Hon'ble Shri P P Srivastava, Member(A)

Shri Raju Kallappa Hooli
Lower Division Clerk
Office of Assistant Collector
Customs Preventive
Bassein Division
Vasai, dist. Thane

(By Adv. Mr. M S Ramamurthy)

..Applicant

v/s

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New delhi 110010.
2. Collector of Central
Excise and Customs,
PMC's Commercial Building,
Hira Baug, Tilak Road,
Pune 411002.
3. Collector of Central
Excise and Customs,
Bombay II Collectorate
Piramal Chambers,
9th floor, Jeejeebhoy Lane,
Lalbaug, Parel,
Mumbai 400012.
4. Assistant Collector,
Customs Preventive,
Bassein Division,
Hathi Mohalla,
Gaurishankar Building,
Vasai, Dist. Thane.

(Mr. M I Sethna, Senior
Central Govt. Standing
Counsel, with Adv. Mr. V.D.
Wadhavkar)

..Respondents



O R D E R

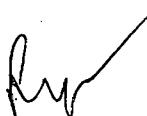
[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply opposing the application. Heard both the counsel for both the sides and we have perused the entire material on record.
2. The applicant's case is that he was originally appointed as Sepoy in the Central Excise and Customs Department in 1976. Sepoy who had passed SSC had a chance of promotion to Group C cadre as LDC in which 10% was reserved to Group D officials for promotion to Group C cadre. The applicant and some others were promoted on ad hoc basis in 1981. Then in 1982 an examination was held for regular promotion from Group D to Group C for the 10% promotional quota. Many Group D employees appeared for the said examination. However, the applicant could not appear for the said examination since he was not informed by his office about the said examination. The applicant was, therefore, deprived of the opportunity of appearing in the said examination and to get a chance for promotion. Though the Assistant Collector made a recommendation that the applicant should be given an opportunity to appear for the examination, no such examination was held for want of sufficient number of candidates. As a result of the said examination many Group D employees including juniors to the applicant came to be promoted as LDCs on regular basis. Subsequently in



1984 the applicant was reverted from the ad hoc post of LDC. Then the applicant appeared for a written test on 18.8.85 and he was qualified in the said test, but the applicant came to be promoted as a LDC on regular basis as per order dated 28.4.89. The applicant claims that he should have been promoted with effect from 15.2.83 when his juniors came to be promoted on regular basis as LDC. Hence the applicant has approached this Tribunal praying for a direction to the respondents to regularise the services of the applicant as LDC with effect from 15.2.1983 and grant him seniority, promotion and all consequential benefits.

3. The respondents have filed a reply opposing the application. Their case is that the applicant is not entitled to any retrospective regularisation of promotion. It is admitted that the applicant was not informed of the Departmental Examination held in 1982 for the 10% promotion quota. Fresh examination could not be held for the applicant since there were no sufficient number of candidates forthcoming. It is stated that the applicant appeared for subsequent departmental examinations held in 1983, 1984 and 1985 and he has failed in all these three examinations. Hence he cannot claim promotion as of right. Though he passed the written examination in 1985 he failed in the typing test and therefore, he could not be promoted. It is stated



that as per a circular issued by the Government the 10% promotion quota reserved for Group D posts was subdivided into two categories of 5% on the basis of seniority-cum-fitness and 5% on the basis of qualifying examination conducted for that post. The applicant came to be promoted as LDC on 21.4.89 on seniority-cum-fitness basis and not on the basis of his passing any departmental examination. Hence it is stated that the applicant is not entitled to retrospective promotion since he did not qualify in the departmental examination though he appeared for the examinations in three years. It is stated that the applicant got his promotion on the basis of seniority for which there is no necessity to pass a departmental examination. Hence it is submitted that the applicant is not entitled to any other benefits.

4. The main point for consideration is whether the applicant has made out a case for getting retrospective promotion from 1982 or any other earlier date prior to 1989. We also have to consider the contentions of the respondents at the time of arguments that the claim is barred by limitation, that there are latches and delays on the part of the applicant in approaching this Tribunal.

5. The learned counsel for the applicant Mr. Ramamurthy contended that since admittedly the applicant was not



informed about his right to appear in the departmental examination of 1982 and since the applicant's juniors came to be promoted in 1983, the applicant is entitled to get his promotion retrospectively from 1983. The argument, though attractive, does not stand the test of scrutiny in the peculiar facts and circumstances of this case. It may be that in 1982 the concerned officer did not inform the applicant about his right to appear for the examination in that year. But it is an admitted fact that the applicant appeared for the same examination in 1983, 1984 and again in 1985 and did not pass in these examinations. What guarantee is there that the applicant would have passed in 1982 if he had been informed about his right to appear for the examination. If atleast the applicant had passed in the examination in 1983 or 1984 then he could have asked for retrospective promotion since he was denied opportunity to appear for the examination in 1982. The applicant had availed three opportunities and appeared for the departmental examinations in three successive years and failed. Hence he cannot claim any retrospective promotion from 1982 when he could not qualify himself for promotion by passing the departmental examination held for the years 1983, 1984 and 1985.

6. As for as 1985 examination is concerned, it may be that the applicant passed in the written examination but



he failed in the typing test. The argument that the applicant had passed a typing test in 1982 should be taken into consideration and he should be deemed to have passed in the 1985 examination has no merit. The earlier passing in 1982 was just to test his capacity that he knows typing etc., but the tests of typing held in 1983, 1984 and 1985 were competitive tests of both written and typing for the purpose of regular promotion to the cadre of LDC.

7. We have already seen that the 10% reservation for Group D employees for promotion to Group C has been subdivided into 5% for direct recruitment by competitive examination and 5% by seniority-cum-fitness/suitability promotion. Since the applicant failed to qualify in all the three departmental competitive examinations held in 1983, 1984 and 1985 he cannot claim promotion to the post of LDC at all, much less retrospectively from 1982.

8: The learned counsel for the applicant heavily relied on a clarification issued by the Deputy Collector in his letter dated 1/6-12-1989 wherein it is stated that the applicant and two others need not again pass typing test and then submitted that applicant should have been promoted in 1985 though he had failed in the typing test, since typing test was not necessary for this cadres. In our view this argument has no merit. This letter is not



in respect of typing test for the 5% direct recruits who had to pass a composite written examination cum typing test. This clarification is in respect of promotional quota of 5% by seniority-cum-suitability basis. This is clear from the letter itself wherein it is mentioned that the clarification is issued in pursuance to letter dated 28.4.89. The letter dated 28.4.89 is at page 54 of the paper book under which four persons including the applicant came to be promoted on the basis of seniority-cum-fitness basis. Even those persons were asked to pass a typing test within six months as per condition No.3 in the promotion order. For this the clarification was issued by the Deputy Collector as per letter dated 1/6-12-1989 at page 56 of the paper book saying that these persons need not pass the typing test. Therefore, the officials who were promoted on the basis of seniority-cum-fitness basis need not again pass typing test is the clarification. It has no reference about the competitive examination for 5% recruitment promotion from Group D to Group C.

9. Since admittedly the applicant has not passed fully the examination held at any time he cannot claim promotion to the 5% quota which is open to all for direct recruitment from Group D to Group C. But, however, when the applicant became senior in course of time and since he was found suitable he was promoted in the 5% quota on



the basis of seniority-cum-fitness basis as per order dated 28.4.89; he cannot claim any retrospective promotion since he was not senior earlier to claim promotion of seniority and he could not claim promotion in the 5% quota for competitive examination which he had not passed at all. Therefore, in our view the applicant has no claim for promotion from any date prior to 28.4.89 and the claim in the present application is misconceived and not sustainable in law.

10. In view of the above discussions we hold that the applicant is not entitled to any regularisation of promotion prior to 28.4.89. This finding is sufficient to dismiss the application.

11. The learned counsel for the respondents submitted that the claim of the applicant is barred by limitation. The present O.A. was filed in 1993 claiming retrospective promotion from 1982 or at least from 1985. The applicant knew in 1982 or 1983 itself that he was denied the opportunity to appear for the examination in 1982 and his junior came to be promoted in 1983. Therefore, the applicant got a cause of action in 1982 or 1983 when his junior came to be promoted. But he kept quite for 10 years and then filed this O.A. in 1993. On the face of it, the learned counsel for respondents is right in his submission that the claim is barred by



limitation. Learned counsel for the applicant submitted that he had filed an application for condonation of delay in M.P.No.913/93 and the application was allowed by condoning the delay as per order of the Tribunal dated 22.11.1993. In our view the M.P. was filed for condoning few months delay in challenging the 1992 seniority list. and hence the Tribunal condoned the delay of few months in filing the O.A. It may be that the applicant had given a representation against 1992 seniority list and that was rejected and therefore he filed the application in 1993. The contention of the application and arguments before us is that the applicant is entitled to be promoted from 1982 i.e., when his junior came to be promoted. It is not a simple case of challenging the seniority list of 1992; as rightly argued on behalf of the respondents, seniority lists are revised once in every two or three years or periodically. A person who keeps silent for 10 years and then sends a representation for change in the latest seniority list and gets a letter of rejection and then he can not approach the Court challenging such rejection letter. The applicant is not merely aggrieved by the 1992 list but his main grievance is that he should have been promoted in 1982 itself when his junior came to be promoted. Therefore, in this case there was no application filed to condone the delay from 1982 to 1992 and hence the claim is hopelessly barred by limitation.



12. Even agreeing for a moment that now the Court cannot consider the question of limitation since rightly or wrongly this Tribunal has allowed the M.P.No. 913/93, the court can reject the case of the applicant on the grounds of delay and latches. A person who sits idle for 10 years cannot come to court and challenge the appointment of his junior in 1982 and seek seniority above his junior retrospectively from 1982, which suffers from delay and latches on the part of the applicant and this ground is sufficient to reject the claim.

13. The learned counsel for the respondents also submitted that the application is bad for non-joinder of necessary parties since many officials who would be affected if the seniority list is to be disturbed by giving retrospective promotion to the applicant are not made parties and therefore the application should be dismissed. In our view we need not consider this question since on merits we find that the applicant has no case and the application is liable to be dismissed.

14. In the result the application is dismissed. In the circumstances of the case there would be no order as to costs.


(P.P. Srivastava)

Member(A)


(R.G. Vaidyanatha)
10/10/97

Vice Chairman