

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 483/94

DATE OF DECISION:

22-9-99

Shri N.B.Jamdade _____ Applicant.

Shri S.Natarajan _____ Advocate for
Applicant.

Versus

Union of India and Others _____ Respondents.

Shri V.D.Vadhavkar for
Shri M.I. Sethna _____ Advocate for
Respondent(s)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

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

(1) To be referred to the Reporter or not? *No.*

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

JLJ
(S.L. JAIN)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:483/94

Wednesday the 22nd day of SEPTEMBER 1999.

CORAM: Hon'ble Shri D.S.Baweja, Member(A)

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

N.B. Jamdade
Residing at
Building No.30/1040
Opp. Golf Club,
Chembur Camp,
Bombay.

...Applicant

By Advocate Shri S.Natarajan.

V/s

Union of India through
The Secretary
Ministry of Finance,
Department of Revenue
Government of India,
North Block, New Delhi.

...Respondent.

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

O R D E R

{Per Shri S.L.Jain, Member(J)}

This is an application filed under Section 19 of the Administrative Tribunals Act 1985, seeking the relief of promotion from the Junior Time Scale (Grade VI) of the Indian Customs and Central Excise in scale Rs. 700-1300 to the Senior Time Scale (Grade V) of that service in scale Rs. 1100-1600 (pre revised)/Rs. 3000-4500 (revised) with effect from 20.11.1984 alongwith costs.

2. There is no dispute between the parties in respect of the facts that the applicant was working as Assistant Collector (Customs and Central Excise). He was placed under suspension on 27.9.1985 and retired with effect from 30.9.1985. He was served

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with Memorandum of charges bearing No. C-14011/9/85-Ad.II dated 26.12.1986. After a due enquiry Article I was partly proved. He was promoted to the post of Assistant Collector on 1.11.1980 (Order No. 153/80) bearing No. A-220012/8/80-Ad.II. He was listed at serial No 48 and that of Shri P.S.Kalve was listed at serial No 49. He took over the charge with effect from 20.11.1980 and Shri Kalve took over the charge with effect from 27.11.1980. He was working continuously on the said post till he retired. He was entitled to be promoted to Senior Time Scale with effect from the date after completion of four years of service. Due to certain Court cases pending regarding the interse seniority and on account of stay order issued, no promotion could be made. Vide interim order dated 13.8.1990 in the case of A.K.Chatterjee and Ors V/s Union of India in Writ Petition No. 4532-33 of 1978, the respondents were directed to issue orders of promotion retrospectively with effect from the date of completion of four years of service in Group A Junior Scale. Accordingly the orders were issued on 11.2.1992. Shri P.S. Kalve, junior to the applicant was promoted ~~was~~ Assistant Collector. In the said order applicant's name does not find place. He came to know the same fact in April 1993 and immediately preferred a representation dated 28.4.1993, but in vain. Hence this OA for the above said reliefs.

3. The applicant's case in brief is that only minor penalty was imposed in disciplinary proceedings. Hence he is entitled for Senior Time Scale promotion due to him with effect from 20.11.1984. As there was no pending proceedings on 20.11.1984 and he was suspended on 27.9.1985 he is entitled for promotion.

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4. The claim of the applicant is resisted by the respondents and urged that the application is barred by time. The applicant was found guilty and a penalty of 10% reduction of pension for one year was imposed against him. In view of O.M.No.22011/2/86 Estt.A dated 12.1.1988 (Exhibit 1) His case was considered and he was not found fit for promotion. Hence prayed for dismissal of the OA alongwith costs.

5. The learned counsel for the applicant relied on 1998 SCC(L&S) 1121 in the case of State of M.P. and Another V/s. I.A.Qureshi and argued that even censure is held to be a penalty and the applicant was awarded a penalty of 10% reduction of pension for one year. Hence he has no right for promotion. The respondents further argued that in view of the O.M. referred to above the case of the applicant was considered and he was not found fit for promotion. On going through the same O.M. we find that the Government servant against whom the disciplinary proceedings are pending is entitled for consideration for promotion overlooking the said fact, that his consideration of the same shall be kept in sealed cover. As the applicant was not found fit and retired on 30.9.1985. Hence he is not entitled for promotion.

6. It is true that due to some Court cases the D.P.C. could not be held timely. But it is unfortunate state of affairs for which the respondents could not be blamed.

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7. In the result, though the applicant has completed four years of service on 20.11.1984, as the D.P.C. could not be convened in the year 1984 till 1992, the matter of promotion remained pending due to litigation, when the D.P.C. was held in the year 1995 he was not found fit for promotion. Hence on the said count the applicant is not entitled for promotion. Hence the OA is liable to be dismissed and is dismissed accordingly. No order as to costs.

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

B.N.BAHADUR
B.N.BAHADUR
(B.N.BAHADUR)
MEMBER(A)

NS