

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 361/98

DATE OF DECISION: 30/01/2001

Smt. Fatima C Fernandes

Applicant.

Shri G.K.Masand

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri M.I.Sethan for R.No.1

Shri V.D.Vadhavkar for R.No.2

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Smt. Shanta Shastry Member(A)

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

Shanta S.
(SHANTA SHAstry)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:361/1998
DATED THE 30 DAY OF JAN 2001
March 1

CORAM:HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Ssmt.Fatima C Fernandes,
working as Inspector of Central Excise,
Belapur II Division,
Mumbai VI,
C.G.O. Complex, 5th Floor,
Belapur, Navi Mumbai. Applicant.

By Advocate Shri G.K.Masand

V/s.

1. Union of India through
the Secretary in the
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.

2. Chief Commissioner of
Central Excise,
Western Zone, Mumbai.

3. Commissioner of Central Excise,
Mumbai - VI,
Navbharat Chambers,
Ranade Road, Dadar (W),
Mumbai - 400 028.

.... Respondents.

By Advocate Shri M.I.Sethna for R.No.1
and Shri V.D.Vadhavkar for R.No.2

....2.

(ORDER)

Per Smt. Shanta Shastry, Member(A)

In this OA, the applicant is seeking promotion to the post of Supdt of Central Excise (Supdt.) in Bombay on the basis of seniority from the date of her initial appointment in Goa i.e. from 23/1/1982 and to promote her w.e.f. 29/8/1997 i.e. the date from which her junior Shri Menon Vaz in the Goa Commissionerate was promoted and to hold a review DPC for the same.

2. The brief facts in this case are as follows:-

The applicant was initially appointed as Inspector of Central Excise (Insp) after due selection vide order dated 10/2/82 though she joined the post at Goa on 23/1/1982. After her marriage in 1985, she sought a transfer to the Bombay Commissionerate, the same having been granted, she joined the Mumbai-II Commissionerate on 13/5/1985. Thereafter she was transferred to Commissionerate III, now redesignated as Commissionerate-IV where she is working presently. While taking the transfer she gave an undertaking to forego her seniority while taking her charge in Mumbai. Inspite of conditional transfer she represented on 25/4/1987 praying for restoration of her seniority by counting the earlier service put in by her at Goa. She received no response. Thereafter, on 29/8/1997, the Respondent No-I, issued order No.181/97 promoting 61 Inspectors of Central Excise to the post of Superintendent including one Shri Menon Vaz who had joined as Inspector at Goa on 2/4/82 i.e. later than the applicant thus being junior to the applicant. Being aggrieved, the applicant made a representation. She made another representation also without any success.

3. The respondents have opposed the claim on the ground that the applicant was allowed transfer in terms of letter No. F.No.A.22015/34/90-AJ.IIIB dated 20/5/80 clause-(ii) which states clearly

"the transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge."

Having given an undertaking to this effect, she is estopped from complaining.

4. The applicant contends that she was compelled to forego her seniority by signing the undertaking. The learned counsel for the applicant is relying on the judgement dated 3/12/96 of Jabalpur Bench in the case of Manohar J Motiramani V/s. Union of India in OA-331/93 in which it was held that an inspector transferred from one Commissionerate to another was entitled to count his past service for the purpose of promotion to the next higher post. This judgement was accepted by the respondent department and the benefit of this judgement was allowed to all similarly placed inspectors. The applicant also had represented to give her the benefit accordingly but to no avail. The learned counsel has further submits that this very Tribunal in a similar case of Preventive Officers of Customs who had in an identical situation been transferred from Goa Customs to Bombay Customs allowed both for seniority and promotion, the past service rendered by them in Goa prior to transfer (OA No.1050/95 and Other OAs in the case of Manohar Satyavan Nayak and Ors V/s. Union of India & Ors). The applicant being placed identically

should also be considered for promotion by counting the past service for seniority and promotion. Similarly in another OA of Smt. Deepa Awachat and Ors, the Tribunal had granted Interim Relief and she was promoted to the post of Superintendent.

5. In the rejoinder, the learned counsel for the applicant has also mentioned another case of Aparna Venkatesh whose past service was counted for seniority and in whose case there was no loss of seniority. Lastly, the learned counsel has produced a letter No.F.No.6/2166-Ad.III-A dated 12/10/1966 of the Central Board of Excise and Customs to show that the cadre of Inspector of Customs of Goa and Bombay are treated as one cadre and therefore being transferred to Bombay should not result in loss of applicant's seniority. It was decided therein that the Executive Staff sanctioned exclusively for Central Excise work in Goa Collectorate, i.e. Dy. Superintendents of Central Excise, Inspector of Central Excise and Sub Inspector of Central Excise should continue to be borne on the combined cadre with the Collectorate of Bombay and suitable officers should be posted to Goa Collectorate by rotation. The learned counsel points out that there is a further letter dated 10/7/1975 from the Central Board of Excise and Customs, New Delhi regarding the filling up of vacancies of Inspector in the Ministerial quota by promotion of UDCs of Goa Collectorate. This letter reiterates the same position as stated in the earlier letter of 12/10/1966. It specifically mentions that Central Excise Staff of Goa and Bombay could be considered for promotion as Supdt. on the basis of a combined seniority lists based on the length of their continuous service subject to maintenance of inter se seniority in the respective cadre. The learned counsel argues that even the respondents have admitted in para-6 of their reply that the

applicant's services will be counted for purpose of determining of eligibility for promotion.

6. The Respondents in their Sur-rejoinder have refuted the arguments. They admit that in the case of Motiramani (supra) the past service prior to voluntary transfer is allowed to be counted for eligibility of service for promotion. But it is not to be counted for purposes of seniority. Referring to the case of the Preventive Officers relied upon by the applicant, the learned counsel urges that it is on a different footing. The letter of 1968 which was relied upon in that judgement categorically called the preventive officers of Goa and Bombay Collectorates as an amalgamated cadre. This is not the case with the Inspectors. Contrary to what the learned counsel for the applicant stated the letter of 10/7/75 actually mentions at the outset itself that the cadre of inspectors of the Goa Collectorate and the Bombay Collectorate should be separated. This decision has been further fortified by para-3 wherein it is said that the Inspector of the Goa Collectorate and the Bombay Collectorate should be arranged in a combined consideration list in the order of their continuous length of service subject to the maintenance of inter se seniority in their respective cadre for purposes of promotion as Superintendent of Central Excise of the Bombay Collectorate. There is thus a clear decision of having separate cadres for the Goa Collectorate and Bombay Collectorate unlike in the case of Preventive Officers.

7. Referring to the case of Aparna Venkatesh, the respondents admit that it was a mistake to have shown the seniority of Aparna from the date of her initial appointment and the same would be corrected.

8. We have heard the learned counsel for both the parties and have given careful consideration to the arguments advanced. We have also perused the letters and judgements relied upon by both the parties. In our considered view there is no denying that the applicant lost her seniority due to her voluntary transfer in terms of condition No.(ii) of the letter dated 20/5/1980 of the Central Board of Excise and Customs. She accepted the conditions by joining at Bombay. She represented for restoration of seniority in 1987. Though she did not receive any response, she has approached this Tribunal only in 1998 i.e. after 11 years of making representation. On this ground itself the OA is not liable to be entertained. However, the immediate cause of action has arisen in her case because of promotion of her immediate junior in Goa in 1997. According to us the judgement in Motiramani's case is applicable to the applicant only to the extent of counting of her past service in Goa Collectorate for eligibility service for promotion only. It does not confer any benefit of seniority or restoration of seniority. Even the case of Preventive Officers decided by this Tribunal on 19/1/1998 cannot come to the help of the applicant because in the case of preventive officers as rightly pointed out by the respondents, the letter of 1968 made it abundantly clear that the cadre of preventive officers of Goa and Bombay Collectorate was to be treated as one amalgamated cadre. In the absence of any evidence contrary to the letter not being in force, the past service was allowed to be counted for purposes of seniority. That is not the case in this OA. The letter of 12/10/1966 is followed by the letter of 10/7/1975 separating the cadres of Inspectors of Goa and Bombay Collectortates. Thus, the

judgement is distinguishable. That apart even in the judgement dated 19/1/1998 this Tribunal also made an observation in para-15 of the judgement that only the service rendered as preventive officer in Goa was to be counted for purposes of seniority for promotion to the post of Superintendent in Bombay Collectorate and not the service put in by the applicant therein as Inspector prior to the service as preventive officer. Thus, in the judgement relied upon by the applicant also, a clear distinction has been made between the cadre of Inspectors and the cadre of Preventive officers.

9. In the facts and circumstances of the case, we are not inclined to interfere with the stand taken by the respondents. The OA being devoid of merit is dismissed. No costs.

Shanta Shastray
(SHANTA SHAstry)
MEMBER(A)

abp

Kuldip Singh
(KULDIP SINGH)
MEMBER(J)