

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 362/98

THURSDAY the 28th day of March 2002

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

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

Makhan Singh
Residing at
Bldg. No.6, Quarter No.112
Customs Quarter, Adenwala Road,
Matunga, 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
Government of India
North Block, New Delhi.
2. Commissioner of Custom
New Custom House
Ballard Estate
Mumbai.Respondents.

ORDER (ORAL)

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

This is an application under Section 19 of the Administrative Tribunals Act 1985 for the declaration that the applicant is and was entitled to be considered for promotion to the post of Superintendent of Customs Group - B alongwith his colleagues who were considered, leading to their promotion vide Establishment Office Order No. 234 of 1997 (Exhibit A) with a direction to the respondents to convene a Review D.P.C. to consider the claim of the applicant for promotion to the post of Superintendent of Customs Group - B and if selected to promote

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the applicant with all consequential benefits including benefit of seniority, pay and arrears and if the respondents have resorted to sealed cover procedure in the case of the applicant. The respondents be directed to open the sealed cover containing the findings of the D.P.C. in the case of the applicant and to give effect to the same forthwith.

2. The applicant joined Mumbai Custom House as a Preventive Officer on 19.2.1981 and the applicant has been working in the said post. The C.B.I. registered a case against the applicant under RC No.30 (A) of 1996. As a result of the said case, applicant was suspended with effect from 9.7.1996 which was revoked vide order dated 20.1.1997 and the applicant was reinstated in service with effect from 21.1.1997.

3. The D.P.C. for promotion to the post of Superintendent of Customs Group - B was held and in consequence there of Office Order No. 234/97 (Exhibit A) dated 29.8.1997 was passed promoting the officers to the said post. The applicant was not promoted as such the applicant has filed this OA for the above said relief.

4. The claim of the applicant is resisted by the respondents. The facts as alleged by the applicant are not being disputed by the respondents.

5. The learned counsel for the applicant relied on O.M. dated 14.9.1992 particularly para 2 of the said OM. We are entirely in agreement with the learned counsel for the applicant that at the time of consideration of the cases of Government

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servants for promotion, details of Government servants in the consideration[↓] for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee:

- (i) Government Servants under suspension
- (ii) Government servants in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending and
- (iii) Government servants in respect of whom prosecution for a criminal charge is pending.

In view of para 2 of the said O.M. the case of such employees referred above are to be kept in sealed cover. On the facts of the present case the applicant's case is not covered by the above three clause referred.

6. The respondents have pleaded in para 5 of the written statement that CBI has already sent the result of their investigation vide its SP Report No. 3/30(A)/96/Mum dated 13.10.1997 wherein they have recommended initiation of RDA for Major Penalty against the applicant. In para 10 the respondents have stated that a charge sheet for Major Penalty has already been issued to him. The said fact[↓] is not been contraverted.

7. The learned counsel for the respondents argued on[↓] the basis of 1999 (9) Supreme 417 Government of A.P. and Another V/s B. Vasantha Rao and Another and argued that even after

empanelment of the applicant for promotion the disciplinary proceedings can continue. It is further observed that "Furthermore, when disciplinary proceedings are pending, we are doubtful whether it was appropriate for the High Court to have directed that the select list for promotion should be given effect to forthwith especially when the High Court in the said order has permitted the disciplinary proceedings to continue." He further relied on 200(3) ATJ 80 Union of India and another V/s R.s. Sharma wherein the proposition laid down by the Apex Court is that where DPC recommended the case of an officer for promotion but in whose case any of the circumstances mentioned in para 2 of the O.M. dated 12.11.1988 arises after the recommendations of the DPC are received but before he is actually promoted, then he is deemed to have been placed under sealed cover by the DPC - Promotion will be given on complete exoneration from the charges. The said provision has already been incorporated in OM dated 14.9.1992.

8. The matter is not Res-integra. The order passed by this bench in OA 178/99 decided on 3.12.2001 Prabhakar Natrajan V/s Union of India and others where this point has been dealt with in detail.

9. In the result the OA fails, deserves to be dismissed and is dismissed with no order as to costs.

Shanta
Shastray

(Smt. Shanta Shastray)
Member (A)

J.(S.L.Jain)

(S.L.Jain)
Member (J)