

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 756/1998

THIS, THE 5TH DAY OF DECEMBER, 2002

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)  
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Krishna Dnyanba Nandgave,  
residing at Juhu Shital.  
Cooperative Housing Society Ltd.,  
MHB colony, J.V.P.D. Scheme,  
Vile parle (West)  
Samarath Ramadas Marg, Juhu,  
Mumbai-400 049. .. Applicant

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India,  
through the Secretary,  
Department of Revenue,  
Ministry of Finance,  
Government of India,  
New Delhi-110 001.
2. The Commissioner of Central  
Excise Bombay II Commissionarate,  
Piramal Chambers,  
Jeejibhoy Road, Parel,  
Mumbai-400 012.
3. The Commissioner of Central Excise  
Bombay I commissionerate, M.K. Road,  
Churchgate,  
Mumbai-400 020. .. Respondents

By Advocate Shri V.D. Vadhavkar.

O R D E R  
Hon'ble Smt. Shanta Shastry, Member (A)

The applicant is aggrieved by his non selection  
for promotion to the cadre of Superintendent of Central  
Excise in the Review DPC meeting convened for the years  
1989, 1990, 1991. The applicant had earlier filed OA

No.556/91 claiming that he ought to have been empanelled for promotion to the grade of Superintendent of Central Excise by the DPC which met on 25/30.6.1990, in March 1991 and June, 1991. The OA was disposed of on 09th November, 1994 by allowing the same and directing the respondents to review the case of the petitioner for promotion by expunging the remarks which were recorded as adverse remark. It was also directed that though the question of promotion in the subsequent years from 1990 onwards was not the subject matter of the application, still considering the fact that the applicant had retired, the respondents should clarify the position in respect of the promotion of the applicant in the subsequent years of 1992, 1993 and 1994.

2. Accordingly, the respondents have reviewed the applicant's case for promotion to the grade of Superintendent on the basis of the DPC meeting held on 04/05.5.1989, 29/30.6.1990 and 27/28.6.1991. The Review DPC considered the case in terms of the OM dated 10th March, 1989 of the DOP&T and found the applicant unfit for promotion for the years 1989 and 1990 and as average for the year 1991. The entire record of the applicant was placed before the Committee and also necessary documents were supplied. However, the DPC could not recommend the applicant for promotion. A further DPC was held on 19th June, 1995 and the applicant's case was again considered by the department, but he was found unfit and could not be promoted inspite of the fact that

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average remarks had been expunged and has been treated as 'Good' as per the judgment of the Tribunal dated 09th November, 1994.

3. It is the contention of the applicant that when the Tribunal had directed to expunge the adverse remarks and to treat the remarks of 'adequate' and just 'adequate' as 'Good', it was difficult to understand as to how the DPC could declare him unfit for promotion when the bench mark for the post is only 'Good'. According to the applicant, the Review DPC decisions are arbitrary, malafide and vindictive. Actually, the record of the applicant could not have ~~been~~ resulted in his being graded as 'Good'. This position was clear from the judgment dated 09.11.1994 itself where the Tribunal had wondered as to why in the face of record the officer was recorded as unfit for promotion by the DPC. Further, the applicant contend that he was not communicated any adverse remarks in any of the years which were relevant for being taken into consideration by the Review DPC except for the year 1986 in regard to which the Tribunal had already directed the respondents to expunge the remarks of the counter signing officer. Consequently, the grading would have undergone change. Therefore, it is difficult to accept the finding of the Review DPC that the applicant was not found fit or that the applicant's assessment was below the bench mark.

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4. The respondents submit that as directed by the Tribunal in OA 556/91 the respondents convened review meetings of the DPC for the years 1989, 1990 and 1991. They adopted the guidelines of bench mark of 'Good' for at least two 'Very Good' / Outstanding and five 'Good' / 'Very Good' / 'Outstanding' reports out of a total eight years reports (qualifying service). Further, five 'Very Good' reports were considered for grading as 'Very Good' out of eight reports. All 'Very Good' or 'Excellent' reports were considered for grading as 'Outstanding'. The Review DPC also decided to ignore the remarks which were adverse in nature in the first three years and considering the nature of the adverse remarks and the improvement shown by the officer thereafter the DPC graded the applicant on the basis of over all record and found him unfit for the year 1989 and 1990 and 'Average' for the year 1991. According to the respondents, the Tribunal's direction to expunge the adverse remark and to treat them as 'Good' were followed. In spite of that the applicant was not found fit.

5. We have heard the learned counsel for the applicant as well as the respondents and have perused the relevant proceedings of the Review DPC as produced by the respondents. The Tribunal had already given a direction in OA 556/91 to review the case of the applicant for the year 1989, 1990 and 1991. Accordingly, the respondents have held the Review DPC

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and considered the case of the applicant. The Review DPC also complied with the directions of the Tribunal to expunge the adverse remarks and to treat the remarks as 'adequate' or 'just adequate' as equivalent to 'Good' while reassessing the performance of the applicant. The Review DPC has followed its own criterion <sup>as for others</sup> for assessing the applicant. However, the applicant could not be found fit. Even for the year 1991 his over all grading was 'Average'. We, in our judicial review, cannot reassess the performance of the applicant. It is only to be seen that the respondents have adopted a fair method while assessing the applicant. We note that the review DPC has followed certain criterion and the applicant could not come upto the bench mark of 'Good' as per the guidelines adopted by the review DPC. We do not find any arbitrariness in the action of the Review DPC. We have therefore, to hold that the applicant's case was duly considered by Review DPC as per the directions of this Tribunal and he could not be found fit for promotion. We therefore, do not see any reason to interfere with the decision of the DPC, accordingly, the OA fails.

5. In the result, the OA is dismissed without any order as to costs.

*Shanta Shastri*

(SMT. SHANTA SHASTRY)  
MEMBER (A)

*Lakshmi Swaminathan*

(SMT. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN (J)

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