

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

D.A. NO. 247 of 1989.

J.A. NO.

DATE OF DECISION 2.3.90.

M.Nageswara Rao

Petitioner

Shri C.Suryanarayana,
Advocate

Advocate for the
Petitioner (s)

Versus

The Collector of Customs,
Customs House,
Madras
& 3 others

Respondent

Shri N.Bhaskar Rao,
Addl. CGSC

Advocate for the
Respondent (s)

CORAM

The Hon'ble Mr. J.Narasimha Murthy : Member(Judl)

The Hon'ble Mr. R.Balasubramanian : Member(Admn)

- 1. Whether Reporters of local papers may be allowed to see the Judgment ?
- 2. To be referred to the Reporter or not?
- 3. whether their Lordship wish to see the fair copy of the Judgment?
- 4. whether it needs to be circulated to other Benches of the Tribunal ?
- 5. Remarks of Vice-Chairman on columns 1,2,4, (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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Hon M
M(J)

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HRBS
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.247 of 1989.

Date of Judgment 2-3-90

M.Nageswara Rao

.. Applicant

Versus

The Collector of Customs,
Customs House,
Madras
& 3 others

.. Respondents

COUNSEL FOR THE APPLICANT : Shri C.Survanarayana

COUNSEL FOR THE RESPONDENTS : Shri N.Bhaskar Rao,
Addl. CGSC

CORAM:

HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (JUDL)

HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (ADMN)

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member (Admn) I

This application under section 19 of the
Administrative Tribunals Act has been filed by Shri
M.Nageswara Rao against the Collector of Customs, Madras
and 3 other respondents - one of them private.

2. The applicant entered service on 7.7.60 as Preventive
Officer Gr.II, subsequently confirmed in that grade
on 2.6.64, promoted as Preventive Officer Gr.I on 3.3.70
and ^{then} also promoted as Sr. Grade Preventive Officer
with effect from 2.7.76. He has alleged that due to

prejudice of the part of some senior officers with a view to
in terms of seniority vis-a-vis

(65)

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Advocate

COUNSEL FOR THE RESPONDENTS : Shri N.Bhaskar Rao,
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HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (JUDL)

HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (ADMN)

{ Judgment as per Hon'ble Shri R.Balasubramanian,
Member (Admn) }

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with effect from 2.7.76. He has alleged that due to
prejudice on the part of some senior officers with a view to
favour R4 he had lost in terms of seniority vis-a-vis
the 4th respondent who having entered service only

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on 21.11.60 was his junior. The applicant has had some adverse entries in the years 1961, 1963 and 1964 which were later expunged in 1972. There were also 3 vigilance/disciplinary cases against him in 1965, 1966 and 1970. - two were dropped and in one he was awarded a minor punishment of censure. The 4th respondent who joined service as Preventive Officer Gr.II later than the applicant and confirmed also later than the applicant had been promoted as Preventive Officer Gr.I earlier than the applicant and since then had been remaining senior to the applicant. The applicant has alleged that injustice has been done to him and has prayed that he be promoted to the post of Superintendent with effect from the date the 4th respondent was promoted to the post of Superintendent with original seniority over R 4. He has pointed out that he is due to retire in July, 1990 and that there are enough number of vacancies in the grade of Superintendent. The applicant had made several representations including the one to the President who had rejected his petition.

3. The respondents have opposed the prayer. There is no dispute on matters of facts like the date of appointment, confirmation etc., in Gr.II, Gr.I and Sr. Grade. The applicant could not be confirmed in Preventive Officer Gr.II and also promoted to Preventive Officer Gr.I because certain vigilance cases were pending at the due time and the D.P.C. findings were kept in sealed cover. The applicant had represented to the Board which

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directed that an ad-hoc D.P.C. for considering his suitability for confirmation in Preventive Officer Gr.II and also promotion to Preventive Officer Gr.I be convened. Accordingly, an ad-hoc D.P.C. met on 11.7.73 and in the light of it he was confirmed as Preventive Officer Gr.II with effect from 2.6.64. He was also promoted as Preventive Officer Gr.I with effect from 3.3.70. Later, the applicant moved the High Court of Andhra Pradesh when there was delay in his confirmation in Preventive Officer Gr.I and promotion to the Senior Grade Preventive Officer. The High Court of Andhra Pradesh dismissed the writ petition filed by him with a direction to consider his case for confirmation in Preventive Officer Gr.I and also ^{promotion} to the Senior Grade Preventive Officer in the next D.P.C. meeting. The next D.P.C. met in 1976 and again the findings were kept in sealed cover as the old vigilance case initiated against him in the year 1970 had still not been finalised. Finally on 15.6.77 the vigilance case initiated against him in the year 1970 was dropped and the sealed covers of the previous D.P.C.s were opened. The D.P.C. which met ^{on 17.9.73} (other than the ad-hoc D.P.C.) had remarked that the applicant was "not yet fit" for confirmation in Preventive Officer Gr.I as well as for promotion to Senior Grade Preventive Officer. The 1976 D.P.C. had, however, found him fit for confirmation in Preventive Officer Gr.I as well as promotion to Senior Grade Preventive

Officer. Based on the recommendation of the 1976 D.P.C. he was confirmed in Preventive Officer Gr.I with effect from 18.12.76 and promoted to Senior Grade Preventive Officer with effect from 2.7.76. The 4th respondent who had no such problem till then had been moving up the ladder in the normal course and the respondents therefore argued that the seniority could not be reversed now. Based on his higher seniority the respondent has eventually been promoted as Superintendent.

4. The applicant has filed a rejoinder to the counter preferred by the respondents. In his rejoinder to the counter the applicant contends that the Collector of Customs, Madras had recommended his case for favourable consideration and feels aggrieved that despite this it has been rejected by the President. He had also alleged, quoting some remarks dated 15.6.77 of the Collector of Customs, as evidence of prejudice against him among the higher-ups. He has further pointed out that certain adverse entries made in the year 1975-76 which were initially treated as not worthy of communication were later conveyed only in the year 1983. He has also stated that even the letter dated 5.10.77 by which he was promoted as Senior Grade Preventive Officer with effect from 2.7.76 was reversed on the plea that it was found to be erroneous treating him as promoted only with effect from 15.3.82. He has

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alleged that the emoluments paid to him as Senior Grade Preventive Officer between 2.7.76 and 15.3.82 had been recovered.

5. We have gone through the records and heard the learned counsels for both the applicant and the respondents. The letter dated 30.6.88 of the Collector of Customs, Madras to the Dy. Sectetary, Ministry of Finance, Govt. of India gives a comprehensive run-through of the case. We have also gone through the D.P.C. proceedings concerned. The Collector of Customs, Madras in his letter dated 30.6.88 has recommended that the applicant should be treated as having been promoted to Preventive Officer Gr.I with effect from 20.6.68 i.e., the date on which his junior was promoted to that grade. The ad-hoc D.P.C. which met on 11.7.73 had recommended him for promotion only with effect from 3.3.70. We find from the D.P.C. proceedings of 17.9.73 (this is a regular D.P.C. in which the applicant was not considered fit either for promotion confirmation in Preventive Officer Gr.I or for promotion to Senior Grade Preventive Officer) and also of December, 1976 which recommended his case for both that there is no malafide intention, ^{or mistake,} evident. Therefore, even if we assume that he was promoted to Preventive Officer Gr.I with effect from 20.6.68 instead of 3.7.70, by virtue of his earlier confirmation in Preventive Officer Gr.I and the subsequent promotions the respondent 4 has stolen a march over the applicant.

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6. In his representation dated 1.4.88 to the President of India, the applicant contends that there is to be only one stage of confirmation in the career of a person and that in his case the date of confirmation in Gr.II should be taken as the only criterion for deciding all subsequent events. He expects thereby to regain the seniority he had lost to R4. Without examining the applicability of the order on merits, it can be just said that the order came into force only from the 1st April, 1988 and hence not applicable to the instant case.

7. As regards ~~altering~~ the date of promotion to the Senior Grade Preventive Officer from 2.7.76 to 15.3.82, we feel this is not correct. This is an outcome of a D.P.C. which met in 1982 by whose decision the adverse entries of 1975-76 were communicated to the applicant. We find no sense in the act of the department in communicating adverse entries 7 years later and then operating on it. We, therefore, hold that the order No.S.2/1/83-Estt. dated 29.1.83 issued by the Additional Collector of Customs changing the date of promotion of the applicant to the Senior Grade Preventive Officer from 2.7.76 to 15.3.82 is illegal. Any recovery that has been made as a sequel to this must be refunded to the applicant within two months of the date of this order.

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To:

1. The Collector of Customs, Custom House, Madras.
2. The Secretary, Personnel Central board of Excise & Customs, New Delhi.
3. The Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
4. Sri Md.Rahman, superintendent (Under suspension) Custom House, Visakhapatnam.
5. One copy to Mr.C.Suryanarayana, Advocate, 1-2-593/50, Srinilayam, Sri Sri Marg, Gaganmahal,Hyderabad-500 029.
6. One copy to Mr.N.Bhaskara Rao,Addl.CGSC,CAT,Hyderabad.
7. One ~~sparecopy~~ copy to the Hon'ble Mr.R.Balasubramanian, Member:(A), CAT,Hyderabad.
8. One spare copy.

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8. Since we have not been able to give the relief sought for in terms of seniority we cannot give any direction on the promotion to the grade of Superintendent which would depend on the seniority. We, however, pick up remarks from the letter of 30.6.88 of the Collector of Customs, Madras.

"Out of the 3 vigilance case/disciplinary proceeding initiated against him during the years 1965, 1966 and 1970, two were dropped since the charges framed could not be proved and one finally resulted in awarding him punishment of 'Censure'. From the years 1973-74 onwards to till date, there were no adverse entries in his C.C.R. and there has been improvement in the quality of his work as borne out by the Annual Confidential Reports of later years."

This is a case calling for sympathetic view and it is open to the respondents to consider him for local ad-hoc promotion in the grade of Superintendent.

9. In the result the application fails and we accordingly dismiss it but with the direction given to the respondents in para 7 above. There are no orders as to costs.

MS

R. Balasubramanian

(J. NARASIMHA MURTHY)
Member (Judl)

(R. BALASUBRAMANIAN)
Member (Admn)

Dee
By DEPUTY REGISTRAR (J)

Dated 2-3-89

Refd. No. 130

Entered by: Checked by: Approved by:
D.R.(S)

Typed by: Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR. B. N. JAYASIMHA: (V.C.)
A N D

HON'BLE MR. D. SURYA RAO: MEMBER (JUDGE)
A N D

HON'BLE MR. J. NARASIMHA MURTHY: (M) (J)
A N D

HON'BLE MR. R. BALASUBRAMANIAN: (M) (A)

DATED: 2-3-90

ORDER/JUDGMENT:

M.A./R.A./C.A./No. 37

T.A.No. (U.P. No.)

D.O. No. 247/89.

Admitted and Interim directions issued.

Allowed.

Dismissed.

Dismissed with direction.

M.A. Ordered:

No order as to costs.

Sent to Xerox on:

