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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION No. 424/90

DATE OF JUDGEMENT: 19-10- 1993

Between

J. Narasimha Rao

.. Applicant

and

1. The Union of India rep by
Secretary, Min. of Finance,
North Block, New Delhi.

2. The Secretary, Central Board
of Excise and Customs
New Delhi.

3. The Collector of Central Excise
and Customs, Basheerbagh
Hyderabad

.. Respondents

Counsel for the Applicant

:: Mr G. Parameshwar Rao

Counsel for the Respondents

N.V. R
:: Mr E. Madan Mohan Rao, Addl.
CGSC

CORAM:

HON'BLE SHRI A.B. GORTHI, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

JUDGEMENT

As per Hon'ble Shri T. Chandrasekhara Reddy, Member, (Judb.)

This application is filed under Section 19 of the Central Administrative Tribunals act, to direct the respondents to consider the applicant for promotion as Collector of Central Excise based on his seniority in the cadre of Superintendent of Central Excise with reference to his initial appointment as Superintendent of Central Excise on 6.7.1978 with all consequential benefits such as fixation of pay and pension and payment of arrears, etc., and pass such other order or orders as may deem fit and proper in the circumstances of the case.

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2. Facts giving rise to this OA in brief, are as follows:

3. The applicant was initially appointed as Inspector of Central Excise on 4.11.55, and posted in Collectorate of Central Excise, Hyderabad. He was later promoted as Selection Grade Inspector w.e.f. 1.11.74. He was confirmed in both the posts of Inspector of Central Excise and Selection Grade Inspector of Central Excise on 10.9.58 and 1.11.74 respectively. Further he was promoted as Superintendent of Central Excise w.e.f. 6.7.78 on temporary and adhoc basis. He was put in probation for a period of two years in the post of Superintendent of Central Excise. Anyhow, the applicant was declared to have completed his probationary period satisfactorily as per the orders of the respondents dated 13.5.1987. It is the grievance of the applicant that even though he successfully completed his probationary period, his confirmation had been deferred for almost 7 years without any valid reasons. The juniors to the applicant had been promoted w.e.f. 1987 as Assistant Collectors of Central Excise. It is the case of the applicant that he also had a right to be considered for promotion to the post of Assistant Collector from the date, his juniors were promoted and as the respondents, according to the applicant, had denied the said promotion illegally and unlawfully, the present OA is filed by the applicant for the relief as indicated above.

4. Counter is filed by the respondents opposing this OA.

5. In the counter filed by the respondents, it is maintained that the turn of the applicant for the first time for confirmation in the Grade of Superintendent 'B' Group 'B' came up in the normal course before the Departmental B Promotion Committee that met in May, 1981 and as there was disciplinary proceeding pending against the applicant,

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the proceedings of the DPC were kept in a sealed cover. Subsequently the case of the applicant was considered by the DPC met on 20.11.1982 and followed the same sealed cover procedure. The Departmental Committee held on 17.11.1983, 7.4.1984 and 20.2.1985 also considered the case of the applicant for confirmation in the Grade of Superintendent Group 'B' and found that the applicant was not fit for confirmation. Finally, the DPC that met on 28.4.1987 found the applicant 'Fit' for confirmation and accordingly confirmed the applicant w.e.f. 3.5.1987 in the grade of Superintendent Group 'B'. It is the case of the respondents that, in view of the delayed confirmation that the applicant lost seniority in the Superintendent Group 'B' cadre and as such, the applicant did not have required seniority for being considered for promotion to the post of Assistant Collector and hence, he was not considered for promotion to the post of Assistant Collector of Central Excise and so this OA is liable to be dismissed. Some other contentions are also raised on behalf of the respondents in the counter/for the purpose of deciding this OA, there is no need to refer to ~~all~~ ^{some} the contentions.

6. We have heard/counsel for both the parties: learned

7. Nodoubt, the applicant had been appointed in the year 1978 as Superintendent of Central Excise on temporary and adhoc basis. Due to departmental proceedings that were pending as against the applicant that culminated in the imposition of censure and stoppage of increment on the applicant the applicant had not been confirmed in the post of Superintendent of Central Excise. But, as already pointed out, the ~~case of the applicant is~~ that he was unjustifiably and illegally denied promotions to the post of Assistant Collector of Central Excise in the year 1987 when his juniors were promoted.

Admittedly, the applicant had served the per and currency of penalty had been over by 30.6.1985. In the usual course, the respondents should have thought of confirming the applicant in the post of Superintendent of Central Excise, Group 'B' within a reasonable time from 30.6.1985. Nevertheless, the dispute that has got to be resolved herein has got nothing to do with the date of confirmation of the applicant in the post of Superintendent of Central Excise.

8. As already pointed out, the grievance of the applicant is that his immediate juniors were promoted to the post of Asst. Collector, in the year 1987 and that the applicant had been denied promotion, as already pointed out, unjustifiably and illegally. It is also the case of the applicant for redressal of his grievance that he had been making representations from 6.5.87 onwards. According to the applicant, he made representations on 6.5.87, 14.5.87, 13.7.87, 25.2.88 and 16.2.90, to the respondents which turned futile. Hence, the applicant has filed the present OA on 21.5.1990.

9. The present OA is filed by the applicant. about 3 years his immediate juniors had been promoted to the post of Assistant Collector ^(- the middle of the year 1987) from the post of Superintendent, Central Excise. So, as could be seen the real grievance of the applicant arose in the middle of the year 1987. Now the question before the Tribunal is whether the OA is filed within time.

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10. It is needless to point out that repeated representations do not extend the period of limitation (See AIR 1990 SC 10 SS Rathore Vs State of MP). It was the bounden duty of the applicant to approach the competent authority within six months for the date, his juniors were promoted to the post of Assistant Collector, for redressal of his grievance by way of suitable representation under Section 20(1) of the Administrative Tribunals Act and if no final orders were passed on the said representation by the competent authority, after expiry of six months, to approach this Tribunal under Section 21 of the Administrative Tribunals Act, within a period of one year for redressal of his grievance. As such a course had not been followed by the applicant, the filing of this OA in the year 1990 (21.5.1990) by the applicant, seems to have ~~been~~ ^{been} barred ~~in time~~.

11. The applicant is highly educated person. Nothing prevented the applicant to approach this Tribunal well in time for redressal of his grievance. We see no acceptable explanation coming from the applicant for the delay in approaching this Tribunal. We see any amount of latches and negligence on the part of the applicant in approaching this Tribunal. No sufficient cause has been made out by the applicant for the delay on his part in approaching this Tribunal.

12. In a recent decision of the Supreme Court reported in 1993 (25) ATC 242 at Page 244, Prafulla Kumar Swain Vs P.C. Misra and others at page 244, where a seniority list was published in 1985 and placement assigned in, was challenged in the year 1988, relief was refused also on the ground of latches and delay. It was further held therein that the Supreme Court did not want to unsettle settled matter with regard to seniority which will lead to several complications. So, if this OA ~~is~~ is to be allowed, the

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seniority that was settled in the Mid 1987 had to be upset which will also result in serious complications. In view of this position, this OA is liable to be dismissed and is accordingly dismissed leaving the parties to bear their own costs.

(T.CHANDRASEKHARA REDDY)
Member (Judl.)

(A.B. GORTHI)
Member (Admn)

Dated: 19-10-1993

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Dy. Registrar (Jud.)

Copy to:-

1. Secretary, Ministry of Finance, Union of India, North Block, New Delhi.
2. The Secretary, Central Board of Excise and Customs, New Delhi.
3. The Collector of Central Excise and Customs, Basheerbagh, Hyderabad.
4. One copy to Sri. G.Parmeswara Rao, advocate, CAT, Hyd.
5. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHI : MEMBER(A)
AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER(JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM: M(A)

Dated: 19/10/1993

ORDER/JUDGMENT:

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

O.A. No.

in
424/90

T.A. No.

(W.P. →)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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