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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. 47/91.

Dt. of Decision : 7-10-94.

B. Balya

.. Applicant.

vs

1. The Union of India rep.
by its Secretary, Ministry
of Finance, (Dept. of Revenue),
New Delhi.
2. The Secretary, Board of
Central Excise & Customs,
New Delhi.
3. The Collector, Central Excise,
Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. V. Venkataramaiah

Counsel for the Respondents : Mr. N.R. Devaraj, S.P. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

O.A. NO. 47/91.

JUDGMENT

Dt: 7.10.94

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri V.Venkataramanaiah, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. This OA was filed praying for striking down the instructions issued in O.M.No.22011/7/86-Estt.(D), dated 3.7.1986 of the Ministry of Home Affairs, Department of Personnel & Training, Government of India by holding them as invalid and to further declare that the applicant is entitled for seniority in the cadre of Inspectors from 4.2.1972, the date of his initial appointment, with all consequential benefits.

3. The applicant joined service as Lower Division Clerk in the Collectorate office of Central Excise, Hyderabad in 1965. Later, as an inservice candidate, he applied for direct recruitment for the post of Inspector of Central Excise and having been selected, he was appointed on transfer as Inspector of Central Excise by the order dated 2.2.1972 of the Collector, Central Excise and he reported for duty in ~~for~~ the said post on 4.2.1972.

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4. As per the extant rules, Inspectors of Central Excise have to be considered for confirmation on completion of two years of service and on availability of regular vacancies, DPC recommends for confirmation if concerned officer is found suitable.

5. ~~Though~~ The applicant and others of his batch completed two years of service by 4.2.1974 and the DPC which met in November 1976 considered their cases in regard to the confirmation of the Inspectors of Central Excise in A.P. Circle. But the recommendation in regard to the applicant was kept in a sealed cover as disciplinary proceeding was ~~xxxx~~ pending against him. When the DPC again met in 1978 for the same purpose, the case of the applicant was not considered as the recommendation of the earlier Committee was in the sealed cover and as the disciplinary proceeding was still pending against him. After inquiry in the disciplinary proceeding, an order was passed in 1979 imposing a penalty of stoppage of increment for two years. The same was set-aside by the order dated 4.10.1980 of the appellate authority. Thereafter, he was allowed to cross Efficiency Bar with effect from 1.2.1978, the date by which he had to cross the Efficiency Bar prior to imposing the penalty.

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6. After the applicant was exonerated, the sealed cover was open and then it was found that the recommendation of the DPC which met in 1976 was to the effect that the applicant was not fit for confirmation. As the DPC which met in 1980 found the applicant fit for confirmation and as his case was not considered by the DPC which met in 1978, the applicant was confirmed with effect from 15.12.1978, the date on which the others who were considered fit for confirmation by the DPC which met in 1978 were confirmed. It is also stated for the respondents during the course of the arguments that the name of the applicant was shown at the top of the list of the Inspectors of Central Excise in the Circle who were confirmed with effect from 15.12.1978 and thus his name was placed immediately below the last one who was confirmed as per the recommendation of the DPC which met in 1976.

7. The applicant filed Writ Petition No. 16402/84 in the High Court of Andhra Pradesh by alleging interalia that the 40 point roster was not followed in filling up the 95 posts of Superintendent of Central Excise sanctioned on adhoc basis in the Circle. The same was transferred to this Tribunal and registered as T.A.No.10/88. The same was disposed of by the order dated 27.6.1989 by ordering that the applicant had to be considered for promotion to the post of Superintendent of Central Excise against the reserved

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quota, for by notification dated 17.7.1977 it was stated that 'Lambadas of Telangana region' are classified as Scheduled Tribes and as the applicant of Telangana region is Lambada, he is also entitled to ~~not~~ consideration for promotion under the quota reserved for STs. It can be stated at this stage that in pursuance of the ~~last~~ notification, the date of confirmation of the applicant was advanced from 15.12.1978 to 27.7.1977. When ~~case taken~~ the ~~application~~ of the applicant was not considered for while promotion / filling up the 95 adhoc posts of Superintendent of Central Excise in the reserved quota for STs on the ground that the applicant is not within the zone of consideration, this OA was filed praying for confirmation in the post of Inspector of Central Excise with effect from 4.2.1972, the date on which he joined in that post.

8. As per the extant rules, the original seniority on the basis of ranking in regard to the direct recruits was subsequently altered on the basis of the date of the confirmation ^{which was provided} and ~~is not~~ on the basis of suitability to be assessed by DPC on completion of two years of service, and on availability of regular vacancy. As already observed, the DPC which met in 1976 held the applicant not suitable for confirmation. The same is not challenged. Hence, his confirmation can be only from a date subsequent to the date on which the last one of the Inspector of Central Excise in the Circle ~~who~~ was confirmed as per the DPC recommendations of 1976.

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9. Ofcourse, it was stated for the respondents that for those who were recommended as fit for confirmation by the DPC which met in 1976, the date of confirmation was given from the date on which regular vacancy was available, while confirmation was given with effect from the date on which DPC recommended confirmation for those who were recommended for confirmation by the DPC which met in 1978. As already observed, the applicant's date of confirmation was advanced to 27.7.1977 when the notification was issued to the effect that Lambadas in Telangana region are also STs and as the applicant is Lambada from Telangana region, is also ST. But thereby ^{in charge in} ~~it was not effected~~ his seniority ranking, for there was no one above him in the list of the Inspectors of Central ^{other than it is the law} Excise who was confirmed as per the recommendations of the DPC which met in 1976. Thus, even if the applicant's date of confirmation is advanced to a date earlier to 27.7.1977 if the vacancy was available prior to that date, there will not be any change in the ranking in the seniority list of confirmed Inspectors of Central Excise in this Circle, & so long the applicant cannot be considered for a vacancy occurred prior to the date of confirmation of the last of the Inspectors of the Central Excise confirmed as per the recommendation of the DPC which met in 1976, and as the case of the applicant for confirmation has to be considered only in regard to a vacancy subsequent to that date. Hence, it will be an

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exercise in futility to enquire whether there was any vacancy subsequent to the date of confirmation of the last of the Inspectors of Central Excise confirmed as per the recommendations of the DPC which met in 1976 and prior to 27.7.1977, the date of ultimate confirmation of the applicant.

10. No other point was urged for the applicant.

11. In the result, the QA is dismissed. No costs.

(R. RANGARAJAN)
MEMBER (ADMN.)

(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 7th October, 1994.
Open court dictation.

Deputy Registrar (J) cc

vsn

To

1. The Secretary, Union of India, Ministry of Finance (Dept.of Revenue), New Delhi.
2. The Secretary, Board of Central Excise & Customs, New Delhi.
3. The Collector, Central Excise, Hyderabad
4. One copy to Mr.V.Venkatramanaiah, 1-10-13, Ashoknagar, Hyd.
5. One copy to Mr.N.R.Devraj, Sr.OGSC.CAT.Hyd.
6. One copy to Library CAT.Hyd.
7. One spare copy.

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27/08/94

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR. R. RANGAKAJAN : M(ADN)

DATED: 7-10-1994

ORDER/JUDGMENT

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

O.A.No.

(T.A.No.

(W.P.NO

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

NOSPARLOPN

Dally
27/10/94

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