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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. No. 1082/92.

Dt. of Decision : 18.7.94.

Mr. M.P. Venkataswamy

.. Applicant.

Vs

2. The Union of India rep. by its Secretary, Ministry of Finance Department of Finance, Government of India, New Delhi.
2. The Secretary, The Central Board of Excise and Customs, Government of India, New Delhi.
3. The Member (Personnel), The Central Board of Excise and Customs, Government of India, New Delhi. .. Respondents.

Counsel for the Applicant : Mr. M.Pandu Ranga Rao

Counsel for the Respondents : Mr. N.V.Raghava Reddy,
Addl.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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O.A.NO.1082/92.

JUDGMENT

Dt: 18.7.94

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

Heard Shri M.Pandu Ranga Rao, learned counsel for the applicant and Shri N.V.Raghava Reddy, learned standing counsel for the respondents.

2. Having been selected on the basis of 1965 IAS etc Civil Services Examinations, the applicant who is a ST, was appointed as Appraiser in Customs & Central Excise Department on 16.12.1966. All India seniority list of Appraisers was published as per the letter dated 28.2.1973. Reservation for promotion from Group 'B' to Group 'A' was provided in 1974. The post of Appraiser is in Group 'B' and the avenue of promotion to the said post is Assistant Collector which is in Group 'A'. When 26 vacancies in the category of Assistant Collectors had arisen and as 4th and 17th roster points were for STs and as the applicant was second in regard to the ST category, he and the other ST candidate Shri J.C.Hansdak who was senior to the applicant were promoted as Assistant Collectors on 10.6.1976.

3. When the All India seniority list of Appraisers published as per the letter dated 28.2.1973 was assailed before the Bombay High Court, the contentions for the applicant therein were accepted and the said seniority list was quashed by the Bombay High Court as per the judgment dated 18.10.1979. SLP thereon was dismissed.

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4. While 50% of the posts of Appraisers were filled up by direct recruitment, remaining 50% of the posts of Appraisers were filled up by promotion. After the Bombay High Court quashed the seniority list of Appraisers, two separate seniority lists of Appraisers i.e., one comprising direct recruit Appraisers and the other comprising promotee Appraisers, were prepared and 13 from each list were promoted to the posts of Assistant Collectors. As only 13 from each list were promoted and as the second ST roster point is only at Point No.17, the applicant was considered for the vacancy in 1978, ^{only} as per the Review DPC of 1983 and thus his promotion was shown as a case of promotion in 1978. The applicant made representations claiming that he was correctly promoted for the vacancy of 1976 and hence no revision ^{had been} should be made for considering him for promotion for the vacancy in 1978 ^{only}.

5. The preparation of two separate lists, one for direct recruit Appraisers and the other for promotee Appraisers in the absence of recruitment rules to that effect for consideration for promotion to the category of Assistant Collectors, was challenged before the Madras High Court and the same was quashed by the said High Court by the judgment dated 12.9.1985. Then, a single list of Appraisers consisting of both direct

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recruit Appraisers and promotee Appraisers was prepared in 1986. Same was quashed by the Principle Bench, Central Administrative Tribunal in 1988 by observing that the seniority has to be fixed on the basis of continuous service in the category of Appraisers. The said order was challenged in appeals before the Supreme Court and ~~they were~~ registered as 4004-07/87 and 215/88. It is stated for the respondents that ~~both~~ the Civil Appeals were heard by the Supreme Court and the judgment ~~was~~ reserved.

6. Shri M.Panduranga Rao, learned counsel for the applicant submitted that only single list but not two separate lists ie., one for direct recruits and the other for promotees, had to be prepared for consideration for promotion to the post of Assistant Collector was upheld by the Madras High Court and ^{as} the same had become final, and ^{as} it is not subject matter of challenge before the Supreme Court ~~and hence~~ it is not necessary to ~~defer~~ the hearing of this OA till the disposal of the Civil Appeals by the Supreme Court.

7. When 26 vacancies in the category of Assistant Collectors were there by the time of consideration for promotion to the said posts in 1976, and as 4th and 17th roster points are for STs, and as the applicant is the second eligible ST candidate for consideration then, and as he was already selected and promoted for the said

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second vacancy as per the orders dated 10.6.1976, the case of the applicant for the said vacancy has to be considered, if his contention that as Shri Hansdac was already selected and appointed in the Textile Commission even in February 1976, he (applicant) should be considered even for the 4th roster point is not going to be accepted, urged the learned counsel for the applicant.

8. The matter for consideration before the Supreme Court in the Civil Appeal Nos. 4004/07/87 and 257/88 is in regard to the interse seniority between the promotee and direct recruit Appraisers. The Madras High Court had already decided, and with respect, we say that it was rightly decided, that only one seniority list of direct recruit and promotee Appraisers has to be prepared for consideration for promotion to the category of Assistant Collectors, as when they were appointed as Appraisers either by direct recruitment or promotion, they formed part of a single stream, and they will not continue to have the label of promotees or direct recruits. Hence, after 12.9.1985, the date of the judgment of the Madras High Court, only a single list of Appraisers was prepared. As 4th and 17th roster points were for STs and as the selection in 1976 had arisen only after reservation ~~xxxxxxxxxxxxxx~~ was provided for the ~~xxxxxxxx~~ promotion from Group 'B' to Group 'A' in 1974, 4th and 17th roster point vacancies

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out of 26 vacancies in the posts of Assistant Collectors should be filled ~~by~~ from among the eligible ST candidates. In fact, in 1976, Shri Hansdac was promoted for the 4th roster point vacancy while the applicant was promoted for the 17th roster point by the order dated 10.6.1976.

9. As the two seniority lists which were prepared after 18.10.1979, the date of the order of the Bombay High Court, were quashed by the Madras High Court, the ^{including} promotions which were given to ST candidates by the order dated 10.6.1976 have to be restored.

10. But it was pleaded for the applicants that even assuming that Shri Hansdac had lien for 4th roster point, as he was already appointed in the Textile Commission by then, the 4th roster point should be filled up by promoting the applicant. We feel that the applicant should not be allowed to come up with the said contention after more than a decade as he had not challenged when he was promoted by the order dated 10.6.1976 in regard to the 17th roster point. As such, there is no need to advert to the said contention for the disposal of this OA.

11. It also has to be stated that the applicant pleaded that ~~in fact~~ he should have been considered for the vacancy in the post of Assistant Collector even in 1972 itself. But by then ~~xxxxxxxxxx~~ there was no

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provision for reservation for promotion from Group 'B' to the lowest rank of Group 'A'. As such, the said plea does not merit consideration.

12. In the reply filed in this OA, it was stated that ~~the case on~~ the representation of the applicant could not be considered in view of the pendency of the proceedings in the Principal Bench and later in the Supreme Court. But, as already observed, the point for consideration before the Principal Bench and the Supreme Court is only in regard to the interse seniority between the promotees and the direct recruits and the question as to whether one seniority list or two seniority lists have to be prepared was no longer in dispute. The case of the applicant has to be considered only on ~~the~~ basis of only one seniority list ^{that} has to be prepared and the Madras High Court held to that effect even by 12.9.1985. Even though, ~~inspite~~ of the representation dated 2.2.1985, the respondents had not chosen to set right the position even after the Madras High Court delivered the judgment on 12.9.1985 and after it had become final. Hence, we feel that in the circumstances, the applicant has to be given the monetary benefits throughout by fixing the date of his promotion to the post of Deputy Collector on the basis that the applicant was promoted as Assistant Collector as on 10.6.1976 for the 17th roster point and on that basis, his case has to be considered for the post of Additional Collector also in accordance with the rules as and when his turn arises.

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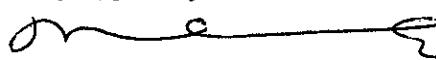
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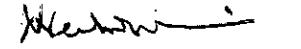
13. In the result, the OA is disposed of as under:-

The promotion of the applicant as Assistant Collector has to be restored as per the order dated 10.6.1976 in promoting him to the said post as against 17th roster point. On that basis, the date of his promotion to the post of Deputy Collector has to be advanced and he has to be given the monetary benefits arising out of it. The case of the applicant has to be considered for the post of Additional Collector in accordance with the rules as and when his turn arises.

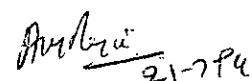
No costs.



(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 18th July, 1994.
Open court dictation.


21-7-94
Deputy Registrar (J) CC

To vsn

1. The Secretary, Ministry of Finance, Union of India, Dept. of Finance, Govt. of India, New Delhi.
2. The Secretary, The Central Board of Excise and Customs, Govt. of India, New Delhi.
3. The Member (Personnel), Central Board of Excise and Customs, Govt. of India, New Delhi.
4. One copy to Mr. M. Panduranga Rao, Advocate, CAT. Hyd.
5. One copy to Mr. N. V. Raghava Reddy, Addl. OGSC. CAT. Hyd.
6. One copy to Library, CAT. Hyd.
7. One spare copy.

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Rebund given.