

(97)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD.

C.A.NO. 178/93

DATE OF JUDGMENT: 23.6.95

BETWEEN:

B.APPALA RAO

APPLICANT

AND

1. The Principal Collector,
Customs Central Excise,
Basheerbagh, Hyderabad, AP.
2. The Collector,
Customs & Central Excise,
Port Area, Visakhapatnam-35.
3. The Addl. Collector of Customs,
Customs House, Visakhapatnam-35.
4. The Principal Collector,
Customs & Central Excise,
Nungambakkam, Madras.
5. The Collector of Customs,
Customs House, Madras-600001.
6. Sri C.Raja Babu
7. Smt. Mary Paul Raj
8. D.Balakrishnam,
9. M.Sankara Rao
10. S.Raja Rao
11. B.Santhanavannan
12. S.Subramanya Raju

RESPONDENTS

COUNSEL FOR THE APPLICANT: SHRI M.P.CHANDRAMOULI

COUNSEL FOR THE RESPONDENTS: SHRI N.V.RAGHAVA REDDY,
SE/Adcl.CGSC.

CORAM:

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

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

(99)

O.A.NO.178/93.

JUDGMENT

Dt:23.6.95

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

Heard Shri M.P.Chandramouli, learned counsel for the applicant and Shri N.V.Raghava Reddy, learned standing counsel for R-1 to R-5.

2. The Visakhapatnam Custom^oHouse was ^{carved} ~~called~~ out from Madras Custom^oHouse on 1.8.1975. The seniority unit for Preventive Officers, Customs is the Custom^oHouse. It is stated that till 1.8.1975, the seniority list of Preventive Officers, Customs was prepared by the Madras Custom^oHouse basing on the date of entry into service. It is ^{also} stated that even in 1976, the Madras Custom House prepared the seniority list of Preventive Officers wherein those who were appointed as Preventive Officers prior to 1.8.1975 were also included even though they worked by then within the jurisdiction of Visakhapatnam Custom House.

3. The seniority list of Preventive Officers was prepared by the Visakhapatnam Custom House by taking the date of confirmation as ~~the~~ relevant by following Para 4(ii) of F.No.24/8/65-Ad.III.A/c., dated 16.3.73 read with Para 4 of Annexure to letter No.9/11/55-RPS., Government of India, Ministry of Home Affairs, dated 22.12.1959. But it is stated that due to liti-
gation in regard to the confirmation ~~in regard to~~ the

contd....

(60)

.. 3 ..

Preventive Officers, Customs ~~were~~ working within the jurisdiction of Madras Custom House, the seniority list was continued to be prepared on the basis of the date of entry till the date on which the circular No.98/92, dated 21.9.1992 was issued.

4. The post of Superintendent, Customs has to be filled by promotion from among Preventive Officers on the basis of selection. The seniority unit for Superintendents, Customs is the Principal Collector, Customs, Madras. The Visakhapatnam Custom House and Madras Custom House are also within the administrative purview of the Principal Collector, Customs, Madras. ~~Then the~~ Preventive Officers within the jurisdiction of Visakhapatnam Custom House and also within the jurisdiction of Madras Custom House are eligible for consideration for promotion to the post of Superintendent, Customs under the control of the Principal Collector, Customs, Madras. As such, it had become necessary to prepare a combined/integrated seniority list of Preventive Officers within the control of Visakhapatnam ~~and~~ Custom House, and also within the control of Madras Custom House for consideration for promotion to the post of Superintendent, Customs.

5. As already observed, the seniority list of Preventive Officers within the jurisdiction of Visakhapatnam Custom House is prepared on the basis

✓

contd....

(101)

.. 4 ..

of the date of confirmation while the seniority list of that cadre within the jurisdiction of Madras Custom House is prepared on the basis of the entry into service. Whenever the Preventive Officers who were appointed prior to 1.8.1975 sought transfer from Visakhapatnam Custom House to Madras Custom House, the date of entry of such transferees in the cadre of Preventive Officers was taken into consideration in fixing the interse seniority of those transferees from Visakhapatnam and those who are working within the jurisdiction of Madras Custom House.

6. The Tribunal can take cognizance of the fact that the confirmation can be two years or more after the date of entry into the cadre of Preventive Officers, for the minimum period of probation is two years for direct recruits.

7. In preparation of the combined/integrated seniority list, the date of confirmation in regard to the Preventive Officers within the purview of Visakhapatnam Custom House is taken into consideration while the date of entry into the cadre is taken as the basis in regard to the Preventive Officers working under Madras Custom House. The inequity is glaring as rightly submitted for the applicant that the appointee of later year of Madras Custom House will be senior to the earlier appointee of Visakhapatnam Custom House. Probably in view of the same, some of

contd....

102

.. 5 ..

the Preventive Officers, Customs who were recruited prior to 1.8.1975 and who joined Visakhapatnam Custom House, had chosen to apply for transfer to Madras Custom House whereby they are gaining places in that combined seniority list so as to be within the zone of consideration earlier for getting promotion to the post of Superintendent, Customs.

8. In fact R-6 herein filed OA 7/93 on the file of Madras Bench of Central Administrative Tribunal praying for direction to the respondents for his transfer to Madras Custom House from Visakhapatnam house and to fix his seniority in the combined seniority list by basing the date of entry into the cadre of Preventive Inspector. The same was allowed by the judgment dated 7.9.1993.

9. The same Recruitment rules apply for appointment to the post of Preventive Officers under Visakhapatnam Custom House and Madras Custom House. From 1.8.1975 the recruitment to the posts of Preventive Officers both by direct recruitment and promotion was being held separately for Visakhapatnam and Madras Custom Houses. But the pay scales, the duties and responsibilities and conditions of service of the Preventive Officers of both Visakhapatnam and Madras Custom Houses are the same. Then can it not be stated that equals are treated as unequals when the date of confirmation is taken as the basis for Preventive

contd....

.. 6 ..

Officers of Visakhapatnam Custom House, while the date of entry for such officers of Madras Custom House was taken as the basis for the combined seniority list for consideration for promotion to the post of Superintendent, Customs. The answer is obviously affirmative. It does not require any deliberation or discussion to come to such a conclusion.

10. So, it has to be held that either the date of confirmation or the date of entry into service has to be taken as the basis for preparation of the combined seniority of Preventive Officers, Customs for consideration for promotion to the post of Superintendent, Customs.

11. The Supreme Court held in AIR 1983 SC 769 (A. Janardhana Vs. Union of India) that it is not just and proper to order date of confirmation as the basis for fixation of seniority for consideration for promotion. Even the Central Government issued O.M.No. 20011/5/90-Estt(D), dated 4.11.1992 whereby the seniority is delinked from confirmation. Further as per the rules which existed prior to 1988, confirmation can be ordered on the basis of availability of vacancies in substantive posts. It will be a time consuming affair, if the madras Custom House is ~~going~~ going

contd....

(104)

.. 7 ..

to be directed to prepare the seniority list of Preventive Officers basing on the date of confirmation. In fact, the proceedings in O.M.No. ~~20011~~ 18011/1/86-Estt(D), dated 28.3.1988 were issued for ordering confirmation even in the ~~in~~ absence of vacancy in substantive post, ~~even though~~ ^{but} it is difficult to ascertain the date of vacancy in the substantive post. So, we feel that it is feasible and practicable if a direction is going to be given for ^{preparation of} a combined seniority ^{list} of the Preventive Officers of Madras and Visakhapatnam Custom Houses ~~has to be prepared~~ on the basis of entry into the cadre of Preventive Officers. Ofcourse, the panel seniority of direct recruits of the same batch/promotees of the same batch has to be followed even though the date of joining of the senior is later to the date of joining of the junior.

12. When this OA which was filed on 23.2.1993 had come up for consideration on 3.3.1993, the following interim order was passed:-

"If promotions are going to be affected, until further orders they would be subject to the result of this OA. It has to be made clear in the orders of promotion that these promotions are subject to the result in this OA."

contd....

13. It is submitted for the respondents that some selections to the posts of Superintendents were made subsequent to 3.3.1993 on the basis of the combined seniority list challenged in this OA. As we held that the combined seniority list which is challenged is inequitable, the selections made subsequent to 3.3.1993 on the basis of the said combined seniority list has to be set-aside and a direction has to be given for making fresh selection for the respective years on the basis of the combined seniority list to be prepared by taking the date of entry in ~~REASONING~~ ~~duration~~ the cadre of Preventive Officers as the basis.

14. There is no challenge in regard to the promotions of R-7 to R-9 which were made prior to the date of filing of this OA. The relief claimed in this OA is as under:-

"For the reasons stated above the applicant prays that this Hon'ble Tribunal may be pleased to direct the Official Respondents to fix the seniority of the applicant in confirmation with the combined interse seniority list dt.15.11.1976 by placing him above Shri C.Rajan Babu in the combined interse seniority list dt. 21.9.1992 published by the Collector of Customs, Madras in Circular No.

(106)

.. 9 ..

98/92 and below Sri P.A.Jabamalai at Sl.No.23 in the seniority list published by Additional Collector of Customs, Visakhapatnam in Circular No.S2/8/92-Estt. dt. 5.11.1992 and consequently direct the respondents (official) to promote the applicant as Superintendent of Customs w.e.f. a date earlier to 24.9.1992 on which date the applicant's junior Smt. Mary Paul Raj was appointed as Superintendent of Customs."

In the absence of the challenge in regard to the promotions of R-7 to R-9, their promotions cannot be quashed even though their selection was on the basis of the combined seniority list which we held as arbitrary and unfeasible.

15. We feel that hardship will be caused to such of those Superintendents who were promoted on the basis of the selection held subsequent to 3.3.1993 if they are again to be empanelled for promotion on the basis of fresh selection. So, we feel that it is just and proper to order the following:-

Fresh integrated/combined seniority list of Preventive Officers, Customs, Visakhapatnam and Madras Customs Houses, other than those who were

contd....

(157)

.. 10 ..

promoted as Superintendents on the basis of selections made prior to 3.3.1993, has to be prepared by treating the date of entry/panel position in regard to the same batch, as basis for consideration for promotion to the post of Superintendent for vacancies for which selections were made on or after 3.3.1993 and for later vacancies. Till the fresh panels of Superintendents in regard to the vacancies for which promotions were made on the basis of the selections held subsequent to 3.3.1993 are made, the Superintendents already promoted on the basis of the said selection should be allowed to continue. The gradings already given to such of those Preventive Officers at the time of the selection on the basis of the impugned seniority list shall not be disturbed if they are going to be within the zone of consideration on the basis of the fresh combined seniority list to be prepared. It is needless to say that if on the basis of preparation of the fresh combined seniority list, the Superintendents already promoted on the basis of selection held subsequent to 3.3.1993 cannot be included in the zone of consideration, they have to be reverted. If on the basis of the preparation of the fresh panels as per this order, it is necessary to revert the juniors on the basis of the ranking, they are to be reverted. Fresh selections in regard to the vacancies for which the promotions were made on the basis of the selections

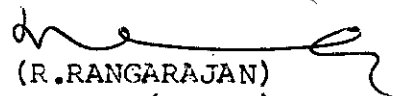
contd...

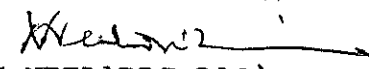
108

.. 11 ..

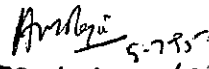
held subsequent to 3.3.1993 have to be made in accordance with the rules on preparation of the combined seniority list by taking the date of entry as the basis. The promotions of such of the Preventive Officers, Customs, given on the basis of selections made subsequent to 3.3.1993, to be empanelled again as per selections on the basis of this order, have to be regularised from the dates on which they earlier assumed the post of Superintendent. If any others are going to be promoted as Superintendents for the first time, on the basis of their selections, they have to be given promotions from the date the respective junior earlier assumed the charge of the post of Superintendent with all consequential benefits including difference in pay, seniority etc.

16. The OA is ordered accordingly. No costs. //


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 23rd June, 1995.
Open court dictation.


Deputy Registrar(J)CC

To VSN

1. The Principal Collector, Customs Central Excise, Basheerbagh, Hyderabad, A.P.
2. The Collector, Customs and Central Excise, Post Area, Visakhapatnam-35.
3. The Addl. Collector of Customs, Customs House, Visakhapatnam-35.
4. The Principal Collector, Customs and Central Excise, Nungambakkam, Madras.
5. The Collector of Customs, Customs House, Madras-1.
6. One copy to Mr. M.P. Chandramouli, Advocate, CAT. Hyd.
7. One copy to Mr. N.V. Raghava Reddy, Addl. CGSC. CAT. Hyd.
8. One copy to Library, CAT. Hyd.
9. One copy to Mr. C. Srinivasa Babam Advocate Plot No-6, Arora Colony, Road No.3, Banjara Hills, Hyd.
10. 2 Copy to All Reporters as per standard list of CAT. Hyd.
11. One spare copy.

pvm

Refonable Case
THPED BY

Typing
CHECKED BY

COMPARED BY

11
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

A N D

THE HON'BLE MR. R. RANGARAJAN: (M (ADMN))

DATED 23/6 1995.

~~ORDER~~ JUDGMENT:

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

in
O.A.No. 178/93.

T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

4

Spere copy

