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CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: HYDERABAD.

O.A.No.500 of 1997

DATE OF ORDER: 18-12-1998.

BETWEEN:

M.V. REDDY,
S/o M.Gangi Reddy,
aged about 55 years,
presently working as
commissioner of Central Excise,
Hyderabad, R/o HYDERABAD.

APPLICANT

A N D

1. The Union of India,
represented by its
Secretary to Government,
Ministry of Finance,
Department of Revenue,
North Block,
Central Secretariat,
New Delhi-110 001.
2. The Establishment Officer,
Department of Personnel & Training,
Room No. 115, North Block,
Central Secretariat,
New Delhi-110 001.
3. The Chairman,
The Central Board of Excise & Customs,
North Block, Central Secretariat,
New Delhi-110 001.
4. Shri P.N. Malhotra,
Chief Commissioner of Central Excise,
Central Excise Building,
115, Maharrishi Karve Road,
Church gate, Mumbai-400 028.
5. Shri G.S. Tampi,
Director General,
National Academy of Customs Excise,
and Narcotics, Nacen Complex,
Sector 29, Faridabad-121 008,
Haryana.

.. RESPONDENTS

COUNSEL FOR APPLICANT : MR. N. RAMA MOHAN RAO

COUNSEL FOR RESPONDENTS : MR. N.R. DEVARAJ, Sr. CGSC

CORAM :

THE HONOURABLE MR.JUSTICE D.H. NASIR, VICE- CHAIRMAN

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

Contd...2.

O R D E R.

(Per Hon'ble Mr.Justice D.H.Nasir, Vice-Chairman)

1. The applicant herein joined the Department of Central Excise and Customs as Class I officer on 17.9.1965. On 14.5.1983 he was promoted and appointed as Collector of Customs and Central Excise. He claims that he was the seniormost Commissioner of Customs and Central Excise in the country and was having a long track record of over 10 years of unblemished service. Further according to him, he had been consistently graded as "very good" officer all throughout his career.
2. The Departmental Promotion Committee (the 'DPC') convened a meeting on 28.9.1995 for considering promotion of the officers of the rank of Commissioner to the rank of Chief Commissioner. However, the applicant's name was not included in the panel of select officers for promotion and officers junior to him came to be included in the said panel, according to the applicant. The applicant, therefore, made a representation to R-1 in the cadre of 1995. In the meantime, it was revealed that 4th and 5th respondents were wrongly graded as "Outstanding" in violation of DPC guidelines. A Review DPC was, therefore, sought to be conducted. Further, according to the applicant, the whole file was sent back to the Revenue Department of the first respondent for reconsideration of the matter by UPSC for conducting a review DPC. However, the Review DPC was not conducted and instead wrote back that it stood by its earlier grading of the officers included in the original panel of five officers of the rank of Commissioner for promotion to the rank of Chief Commissioner and the DOPT submitted a revised panel strictly drawn on merits for approval of the ACC where the applicant's name was also included, according to the applicant. The Cabinet Secretariat approved the revised proposal and so did the Home

Ministry of Union of India. However, the first respondent operated the earlier panel of officers only, drawn by the DPC in its meeting held on 28.9.1995 and granted promotion to the 4th and 5th respondents to the rank of Chief Commissioner in spite of the fact that, according to the applicant, they were juniors to the applicant and that they were found no more meritorious as compared to the applicant.

After examining the character rolls of the eligible officers, the UPSC assessed them as under:

<u>S.No.</u>	<u>Name(S/Sh.)</u>	<u>Assessment.</u>
1.	M.C.Sharma	As in sealed cover
2.	S.K.Malhi	Very Good
3.	Sukumar Shankar	Outstanding
4.	P.N.Malhotra	Outstanding
5.	K.L.Verma	Outstanding
6.	A.K.Pande	Outstanding
7.	A.K.Mitra	Very Good
8.	Gowri Shankar	Very Good
9.	J.H.Joglekar	Very Good
10.	M.V.Reddy	Very Good
11.	G.S.Tampi	Outstanding
12.	R.K.Chakraborty	Very Good
13.	G.N.Sarangi	Outstanding
14.	N.Obhrai	Very Good.

Being aggrieved by the said decision, the applicant filed the present O.A. for redressal of his grievances and sought a declaration that the panel prepared by the DPC held on 28.9.1995 was illegal and void and to direct the respondent No.1 to operate the revised panel as recommended by the DOPT and endorsed by the Cabinet Secretariat in which the applicant's name had been included for promotion to the grade of Chief Commissioner.

3. Respondents 1,2 and 3 vehemently resisted the claim advanced by the applicant. According to the respondents, the

Commissioner did not find any justification in reviewing or reconsidering the recommendations originally made by the DPC. Keeping in view the general instructions dated 10.4.1989 of the Department of Personnel and Training with regard to the finding of the DPC which, inter alia, envisaged that the DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs and take its own assessment on the basis of the entries in the CRs, having regard to the fact that sometimes the over all grading in a C.R. may be inconsistent with the grading under various parametres or the attributes. It is further contended that the assessment of the DPC which applied its mind as the Committee could substantially be different from the Reporting/Reviewing Officer, based on various contradictory and inconsistent remarks in the ACR. The proposal was, therefore, sent back to the Department of Personnel and Training for obtaining the approval of the competent authority which approved the proposal to promote Shri Sukumar Shankar, P.N. Malhotra, K.L.Verma, A.K. Pande and G.S.Tampi to the grade of Chief Commissioner. These officers were eventually promoted to the grade of Chief Commissioner vide Office Order No.124/1996 dated 8th August, 1996.

4. With these basic facts in view, let us now examine the veracity of the claims advanced by the applicant in this O.A. It came to the notice of the Bench during the course of arguments that earlier an application being OA No.611/96 challenging the promotion order dated 8th August, 1996 was filed in Central Administrative Tribunal, Ahmedabad Bench by Shri S.K. Malhi and the said O.A. was dismissed by that Bench by its judgment dated 11th February, 1998. The Ahmedabad Bench of the Tribunal in para-14 of its judgment took note of para 6.2.1 of the guidelines issued by the DOPT vide Memo dated 10th April, 1989 which reads as follows :

" The DPC should not be guided merely by the overall grading, if any, that maybe recorded in the CRs, because it

has been noticed that sometimes the overall grading in a CR may be inconsistent with the grading under various parameters or attributes."

On page 16 of the typed copy of the said judgment in para 15 a note is taken of the fact that the UPSC had also observed in their reply that they had found no justification to review or reconsider the recommendation of the DPC. The Ahmedabad Bench also extracted the following observations made by the Hon'ble Supreme Court in Mrs. Anil Katiyar v. Union of India (AIR 1997 SC 2656) :

"Before the Tribunal the main contention urged by the appellant was that the selection was made by the DPC on the basis of the Annual Confidential Reports (ACRs) of the appellant and resp.no.4 for the years 1990-91, 1991-92 and 1992-93 and that in the ACRs for the years 1990-91 and 1991-92 the appellant was graded as "Outstanding" by the reporting officer as well as the Reviewing officer and in the ACR for the year 1992-93 she was graded as "Very Good" by the reporting officer as well as the reviewing officer and that the respondent No.4 on the other hand, was graded as "Very Good" by the reporting officer in all the three ACRs. The submission was that since the appellant had been graded as "Outstanding" in two out of three ACRs by the reporting officer as well as the reviewing officer grading the applicant as "Very Good" by the DPC was not justified. The Tribunal has held that it was not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not go into the recommendations made by the DPC which had been accepted by the Government."

It was further noted in the judgment of the Ahmedabad Bench that the Apex Court while disposing of the appeal in Anil Katiyar's case (supra)also made the following observations:

"Having regard to the limited scope of judicial review of the merits of selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides."

"The question is whether the action of the DPC in grading the appellant as "Very Good" can be held to be arbitrary Sh.G.L.Sanghi, the learned senior counsel appearing for the Union Public Service Commission, has placed before us the confidential procedure followed by the DPCs in the Union Public Service Commission, has placed before us the confidential procedure followed by the DPCs in the Union Public Service Commission for giving overall gradings, including that of "Outstanding" to an officer. Having regard to the said confidential procedure which is followed by the Union Public Service Commission, we are unable to hold that the decision of the DPC in grading the appellant as "Very Good" instead of "Outstanding" can be said to be arbitrary. No ground is, therefore, made out for interference with the selection of respondent No.4 by the DPC on the basis of which he has been appointed as Deputy Government Advocate, but at the same time, it must be held that the Tribunal was in error in going into the question whether the appellant had been rightly graded as "Outstanding" in the ACRs for the years 1990-91 and 1991-92. The observations of the Tribunal that out of the two "Outstanding" gradings given to the appellant one "Outstanding" grading does not flow from

various parameters given and the reports entered therein, cannot therefore, be upheld and are accordingly set aside."

The Ahmedabad Bench of the Tribunal eventually held that no grounds were made out to interfere with the selection made by the DPC held on 28.9.1995.

It was further submitted on behalf of the respondents that the name of the applicant along with other officers whose names figured in the consideration list were duly considered by the DPC which met on 28.9.1995 and based on the service records of the officer, the name of the applicant could not be included in the panel. As emphatically pointed out by the learned Standing Counsel for the respondents all the officers who were considered and included in the panel by the DPC were senior to the applicant except Shri G.S.Tampi. All the five officers recommended by the DPC and approved by the competent authority were promoted to the grade of Chief Commissioner. It was also contended by the respondents that promotion to the post of Chief Commissioner was made not on the basis of "selection" but on merits and that the minimum bench mark though should be "Very Good", the officers who were graded as "Outstanding" would rank en block senior to those who were graded as "Very Good" and placed in the select panel accordingly upto the number of vacancies, while maintaining their inter se seniority in the feeder grade and in this process, the officers who were graded as "Very Good" were not placed in the select panel and officers with "Outstanding" grading alone upto the required number of vacancies were placed in the select panel and finally approved for promotion by the competent authority.

5. In the instant case, we have carefully examined the proceedings of the DPC which were placed before us for our scrutiny without making the said proceedings a part of the record of this case in view of the confidential nature of the

proceedings. Suffice it to say that we have not found any flaw in the proceedings and nothing even to raise a *prima facie* doubt regarding the correctness of the conclusions arrived at by the DPC. No *mala fides* are also alleged by the applicant himself against the respondents.

6. The panel of names prepared by the DPC was assailed by the learned counsel Mr. Ram Mohan Rao for the applicant also on the ground that one of the empanelled officers had an adverse entry in his CCR which was made by Shri J. Datta, the then Chairman of the Central Board of Excise and Customs. The said adverse entry was not fully expunged and therefore, he was not eligible to be graded as "Outstanding" by any DPC. It was also submitted by the learned counsel for the applicant that Shri G.S. Tampi and Shri Sukumar Shankar were members along with others in a Reward Committee which carelessly sanctioned a reward of Rs. 1 crore in the Gangoli gold case of Mangalore which had become a subject matter of C.B.I. inquiry and which had resulted in action against Sri J.P. Kaushik, Principal Collector (Rtd) and Manohar, Additional Collector (now under suspension) who were found guilty of fraud. These officers, according to the learned counsel for the applicant, could, by no stretch of imagination, ever be graded as "Outstanding" by any DPC and could not be treated as worthy of being empanelled. Further, according to the learned counsel for the applicant, Shri Sukumar Shankar who was considered in the DPC held in September, 1995 was abruptly transferred from Madras Customs House to Calcutta for bungling in the scandal relating to import of coal by T.N. Electricity Board and therefore, according to Mr. Ram Mohan Rao, he was also not worthy of being graded as "Outstanding" in September, 1995 by the DPC. Shri Sukumar Shankar while working as Collector of Central Excise, Bangalore, had, according to Mr. Ram Moan Rao, in one case returned the case records to the assessee which were reported lost subsequently and on account of which, the

department's effort to adjudicate and launch prosecution eventually failed when the matter went to Tribunal and that no action had been taken in spite of the fact that the Vigilance inquiry was conducted by the Deputy Director(Vig.), Madras.

7. While the above allegations have remained unsubstantiated before us, as already stated earlier, in OA No.611/96 which was decided on 11.2.1998, the DPC proceedings which are challenged before us in this O.A. were the subject matter of challenge also before the Ahmedabad Bench. The respondents Shri Sukumar Shankar, Shri K.L.Verma, Shri A.K.Pande, Shri P.N.Malhotra and Shri G.S.Tampi were held to be rightly graded as "Outstanding" by the DPC admittedly in accordance with the grading secured by them in the CRs for a period of 5 years considered by the DPC. It has not been brought to our knowledge that the said decision of Ahmedabad Bench has been reversed or altered ~~or~~ modified. It would, therefore, not be in order for us to ^{re-} consider or reevaluate the gradings allotted by the DPC. In this judgment also we have observed earlier as to how the conclusions arrived at by the DPC did not warrant any reconsideration or review by this Tribunal. It is, therefore, incumbent upon us to abstain from scrutinising the same as if this Bench is sitting in appeal over the findings of the DPC.

8. It is also pertinent to take note of the fact that the name of the present applicant Shri M.V.Reddy appears at Serial No.10 of the panel of names prepared by the DPC and it is not disputed that only 5 incumbents out of 14 whose names were empanelled, were to be promoted to the post of Chief Commissioner, Customs and Central Excise. If two incumbents whose empanelment at Serial Nos.4 and 5 of the list who were graded as "Outstanding" were found to have been erroneously so graded, the applicant empanelled at Sl.No.10 would still not

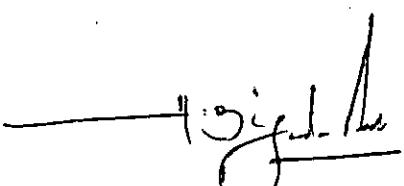
stand any chance to be promoted in view of the fact that Shri G.S.Tampi at Sl.No.11 and Shri G.N.Sarangi at Sl.No.13 have been graded as "Outstanding" and thus would stand a preferential right to be considered as against the chance of Shri M.V.Reddy who is graded only as "Very Good". This aspect of the case goes to the root of the entire controversy before us and defeats any claim advanced by the applicant.

9. This O.A. is not in the nature of a Public Interest Litigation warranting any conclusions to be recorded by way of a principle to be followed in all cases in future. The present controversy is strictly confined to the rights claimed by an individual depending upon the individual facts and circumstances in relation to each incumbent. The applicant, therefore, as rightly contended by the learned Standing Counsel for the respondents, has no locus standi to file this O.A. and claim the relief as prayed for. The case of each incumbent on the panel need not be individually examined and evaluated by us.

10. Before parting with this order, it is necessary to take note of the decision of the Hon'ble Supreme Court in *Union of India v. A.K.Chakraborty*, reported in (1995)30 ATC 79, in which it has been held that the Tribunal rightly recognised the decision that the Appointing Authority could, for reasons to be placed on record, differ from the recommendation of the Departmental Promotion Committee. It was, however, found that such reasons were to be obtained. The Tribunal held that the Appointing Committee was at liberty to consider the recommendation of the DPC again; but in the meantime, the applicant could not be posted in any of the post under any of his juniors. The Hon'ble Supreme Court, therefore, held that the Appointing Authority had the liberty to consider whether reasons justifying any departure from the recommendations of the DPC existed. The reconsideration was directed to be done as expeditiously as possible, but in any

event not later than four months from the date on which the order was passed.

11. Taking all the above facts and circumstances into consideration, we are firmly of the opinion that there is no case for interfering with the selection made by the DPC. Hence, the O.A. deserves to be dismissed and it is hereby dismissed; however, with no order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(D.H. NASIR)
VICE-CHAIRMAN.

DATED THE 18th DECEMBER, 1998.

DJ/

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

THE HON'BLE MR.JUSTICE D.H.NASIR :
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(ADM)

DATED: 18-12-1998

ORDER/JUDGMENT

R.C.A./M.No.

in

O.A.No.

500/97

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.

pvm

