

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,  
JAIPUR.

Date of Decision: 16.4.2002

OA 277/98

J.L.Lalwani, Air Customs Officer, Sahar International  
Airport, Mumbai.

... Applicant

Versus

1. Union of India through Chairman, Central Board of  
Excise & Customs, Ministry of Finance, Deptt. of  
Revenue, North Block, New Delhi.
2. Chief Commissioner of Customs & Central Excise  
(JZ), NCRB, Statue Circle, Jaipur.
3. Commissioner, Central Excise Commissionerate,  
Jaipur-I, NCRB, Statue Circle, Jaipur.
4. Chief Commissioner of Customs, New Customs  
House, Ballard Estate, Mumbai.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

Mr.U.D.Sharma, counsel for the Applicant

Mr.R.L.Agarwal, brief holder for Mr.Bhanwar Bagri,  
counsel for the Respondents

O R D E R

PER HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

In the present OA, the moot point for consideration is as to from which date the applicant is entitled for promotion to the post of Superintendent Grade 'B' pursuant to the recommendations made by the DPC on 25.6.97. This controversy has come in the wake of the following facts.

2. At the stage when the applicant was Inspector in the Central Excise, he went on deputation, by order dated 29.1.97 (Ann.A/1), on the clear understanding that he shall not be paid any deputation allowance and that whenever he gets promotion in the parent department, his term of deputation shall come to an



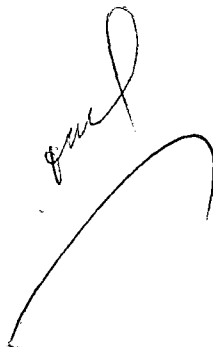
end. To be precise, we quote the condition No.6 mentioned in the order of deputation (Ann.A/1) as follows :

"In the event of their promotion to higher grade, the officers will be liable to be reverted back to their parent Commissionerate or posted anywhere he may be ordered by the competent authority in this regard."

Pursuant to the deputation order, the applicant joined Sahar International Airport, Mumbai. When he was working there on deputation, he was promoted vide order dated 16.7.97 (Ann.A/11) to the post of Superintendent Grade 'B'. The applicant did not join the post on promotion. On receipt of the promotion order, he made a representation dated 30.7.97 (ann.A/13) foregoing the promotion and in the penultimate paragraph he mentioned as follows :

"My option to forego the promotion is without prejudice to my rights & contentions in representations dated 12.6.97 and 21.7.97 addressed to the Member (Personnel) CBEC, New Delhi for grant of proforma promotion and copies of the same submitted to your honour for favour of recommendation to the CBEC, New Delhi."

The parent department considered the representations of the applicant and by letter dated 28.8.97 (Ann.A/3) not only rejected the representations of the applicant but debarred him from promotion to the post of Superintendent Grade 'B' for a period of one year from the date of the DPC held on 25.6.97 for promotion to the post of Superintendent Grade 'B', or till a next vacancy arises, whichever is later. The applicant, it appears, made a representation on 1.9.97, which was suitably replied by letter dated 11.9.97 (Ann.A/4), in



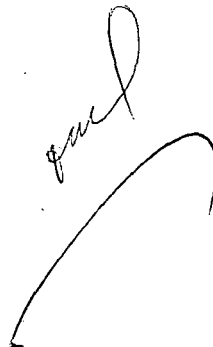
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which it was categorically mentioned that the representations of the applicant have already been rejected and his prayer to withdraw the orders passed on the representations cannot be acceded to.

3. By two separate orders of the same date i.e. 30.6.98 (Ann.A/5 & Ann.A/6) regular as well as ad hoc promotions to the post of Superintendent Grade 'B' were made.

4. The contention of the applicant appears to be that since the period of debarment has already elapsed, he was entitled for promotion at least from 30.6.98, on which date he was willing to come back to the department.

5. The learned counsel for the respondents pointed out that in view of the Government of India's letter dated 23.2.93 (Ann.A/8) it was incumbent for the applicant to have first joined on the substantive post of Inspector and then to seek promotion. This order of the Government of India has been challenged to be arbitrary and discriminatory by the applicant.

6. Ultimately, the applicant, it appears, joined the department after completion of the period of deputation on 4.9.98. He was posted as Inspector, which was the post from which the applicant had gone on deputation, and on 8.10.98 he was promoted as Superintendent Grade 'B' and since then he is continuing as such.


7. The learned counsel for the applicant urged that the applicant is entitled for promotion to the post of Superintendent Grade 'B' w.e.f. 30.6.98, when some of his juniors were promoted to the said post. The learned counsel for the respondents maintained that

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the applicant was not entitled for promotion to the aforesaid post prior to 4.9.98, on which date the applicant returned from deputation.

8. In support of his contention, the learned counsel for the applicant heavily relied on the decision dated 19.5.89, in OA 378/88, N.C. Chakraborty v. UOI & Ors., passed by the Central Administrative Tribunal, Calcutta Bench, reported at 1990 (1) SLJ 101. We have thoroughly studied the decision aforesaid and find that it is not applicable to the facts of the present case. The observations made in the said decision are not of universal application and whatever has been said in the said decision, is to be restricted to the set of the facts in that case only. Even otherwise, in that case it was held that a fresh DPC could not have been convened after return of the person who has gone on deputation. In this case, therefore, since the applicant had returned to the parent department only on 4.9.98, the question of convening the DPC prior to the said date did not arise. The applicant can get promotion on the post of Superintendent Grade 'B' w.e.f. 4.9.98 as in between the period 4.9.98 and the actual date of promotion i.e. 8.10.98 no other person was promoted and no order was passed.

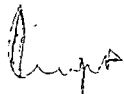
9. The learned counsel for the applicant urged that the applicant claims parity on the ground that Shri N.M.Vaishya, in respect of whom an order dated 30.4.98 (Ann.A/25) was issued, has been granted promotion while he was on deputation and, therefore, in the case of the applicant, the department is adopting an attitude of hostile discrimination. Full facts of the case of Shri N.M.Vaishya are not before us, but the fact remains that the applicant did refuse the promotion while he was on deputation. It is not known



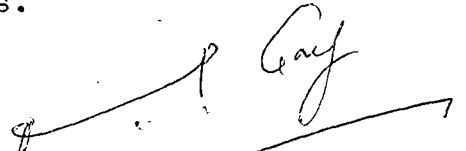
whether said Mr.Vishya also refused to accept promotion while he was on deputation or he was granted extension by the department. Therefore, the applicant cannot claim parity with the case of Mr.N.M.Vaishya.

10. The learned counsel for the applicant has stated that he does not press the relief of deputation allowance.

11. In view of the above facts, this OA succeeds and is allowed only to the extent that the applicant shall be treated to have been promoted on the post of Superintendent Grade 'B' w.e.f. 4.9.98 with necessary consequential benefits as may be admissible to him under the law. In other respects, the OA stands dismissed. No order as to costs.



(A.P.NAGRATH)  
MEMBER (A)



(JUSTICE O.P.GARG)  
VICE CHAIRMAN