

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Applications Nos. 276 & 283 of 2005

Jabalpur, this the 26th day of December, 2006.

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

(1)Original Application No. 276 of 2005

C. Narayan Rao, S/o late Shri Ch. Ramanayya, Aged about 48 years, Employed as Inspector, Customs and Central Excise, Range-I, Jamul, Division-II, BHILAI, Residing at: Dubey Colony, Mova, Plot No.437/8, Raipur (CG)

-Applicant

(By Advocate – Shri B.P.Rao)

VERSUS

1. Union of India, Through : The Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.

2. The Commissioner, Customs and Central Excise, Manikbagh Palace, P.B.No.10, Indore (MP).

3. The Commissioner, Customs and Central Excise, Central Excise Building, Tikra Para, Raipur (CG).

4. The Commissioner, Customs and Central Excise, Telang Khadi Road, Civil Lines, Nagpur(MS).

-Respondents

(By Advocate – Shri S.P.Singh)

(2)Original Application No. 283 of 2005

C. Narayan Rao, S/o late Shri Ch. Ramanayya, Aged about 48 years, Employed as Inspector, Customs and

Gm

Central Excise, Range-I, Jamul, Division-II, BHILAI,
Residing at: Dubey Colony, Mova, Plot No.437/8, Raipur
(CG)

-Applicant

(By Advocate – Shri B.P.Rao)

VERSUS

1. Union of India, Through : The Secretary, Ministry of
Finance, Department of Revenue, North Block, New
Delhi.

2 The Commissioner, Customs and Central Excise,
Telang Khadi Road, Civil Lines, Nagpur (MS).

3. The Commissioner, Customs and Central Excise,
Manikbagh Palace, P.B.No.10, Indore (MP).

4. The Commissioner, Customs and Central Excise,
Central Excise Building, Tikra Para, Raipur (CG).

-Respondents

(By Advocate – Shri S.P.Singh)

COMMON ORDER

By Dr.G.C.Srivastava,VC.-

These Original Applications are being disposed of by a
common order as they relate to the same cause of action.

2. The basic fact in issue is that a charge sheet for major
penalty was issued to the applicant on 16.6.1989, resulting in
imposition of penalty of stoppage of one increment without
cumulative effect. The penalty order was passed on 24.6.1992 and
the appellate order by which the applicant's appeal was rejected
was passed on 12.2.1996. These orders were challenged by the
applicant before this Tribunal in OA No.14/1997 which was
disposed of vide order dated 23.7.2002 (annexure A-1) by which
the OA was allowed. The penalty order and the appellate order

Gm

were quashed and the applicant was declared to be entitled to all consequential benefits. In compliance of this order of the Tribunal, the applicant was given the increment that had been stopped (annexure A-4) but no other consequential benefits were given. These OAs have been filed seeking this Tribunal's intervention for grant of consequential benefits to the applicant. Through OA No.276/2005 the applicant has prayed for the following relief:-

“8.2..to direct the respondent/s to consider the applicants promotion as Inspector Grade at par with his juniors with all consequential benefits”.

and through OA 283/2005, the relief prayed for by the applicant is as under:-

“8.2...to direct the respondent's to consider the applicant's confirmation as Stenographer Grade III w.e.f. 08.09.1985 or at least from 22.6.1988 at par with his juniors with all consequential benefits”.

3. The case of the applicant is that since the penalty order has been quashed and set aside, he has to be confirmed with effect from 8.9.1985 when he completed two years of service or at least from 22.6.1988 when his juniors were confirmed. The applicant further contended that he was not promoted to higher grades including Stenographer Grade-II and Inspector, as he was not confirmed, when he was eligible. On the other hand, his juniors were confirmed with effect from 22.6.1988 and some of them were also promoted subsequently as Stenographer Grade-II and as Inspector. Accordingly, the applicant has prayed that he should be confirmed as Stenographer Grade-III and promoted as Inspector at par with his juniors along with all consequential benefits.

4. Opposing the prayers of the applicant, the respondents in their reply have submitted that there is no provision for automatic

G

confirmation on expiry of two years probation period. Hence, the question of confirming the applicant with effect from 8.9.1985 does not arise. According to the DOPT's instructions, prior to 28.3.1988, confirmation was linked with availability of permanent vacancies in the grade. The first DPC that was held after 1985 was on 10.11.1986 when five vacancies were available for confirmation. The applicant was no.13 in the list and hence he could not be considered for confirmation. Next DPC was held on 22.6.1988 by which time it was clarified by the DOPT that confirmation was to be made only in the entry grade and was to be delinked from the availability of permanent vacancies. At that time preliminary inquiry had been initiated against the applicant and his integrity was not certified. Accordingly, the recommendations of the DPC in respect of the applicant was kept in sealed cover. In the subsequent DPC held on 14.12.1989 again recommendation of the DPC in his case was kept in sealed cover as charge sheet had already been issued against him. The recommendations in respect of the applicant were kept again in sealed cover after DPC meetings on 11.10.1990 and 24.12.1991. The next DPC was held on 11.2.1994 and since disciplinary case against the applicant had already been decided by then and penalty period was also over on 3.8.1993, he was found fit for confirmation and he was accordingly confirmed with effect from 11.2.1994.

5. Regarding promotion, the respondents have denied the contention of the applicant that his case was not considered as he was not confirmed. The respondents in their reply have submitted that the case of the applicant was considered for promotion by the DPC which was held on 19.10.1989 but the DPC found him unfit

Gu

and hence he could not be promoted. The next DPC was held in the month of October, 1990 but due to fewer vacancies the applicant could not come in the zone of consideration and hence he was not considered by the DPC. In subsequent DPCs up to 1994 the name of the applicant was considered but due to his failure to clear either the physical test or personal interview he was found unfit and could not be promoted.

6. The respondents also took a preliminary objection that the OAs are barred by limitation. This was controverted by the applicant in his rejoinder, wherein he has stated that the present OAs have arisen out of incomplete compliance of this Tribunal's order in OA No.14/1997 whereafter he filed CCP No.26/2003 which was disposed of on 16.3.2004 giving him the liberty to approach this Tribunal for redressal of his grievance. These OAs have accordingly been filed well within time. Accepting this contention of the applicant, we hold that OAs are well within time and do not suffer from limitation angle.

7. Undoubtedly, orders by which the penalty of stoppage of one increment with non-cumulative effect was imposed on the applicant has been quashed and set aside by this Tribunal. The Tribunal has also declared that the applicant is entitled to all consequential benefits. This obviously includes confirmation which was admittedly not done earlier because of the pendency of disciplinary proceedings and also promotion. The respondents have also admitted that the case of the applicant was kept in sealed cover in respect of the DPCs which were held from 22.6.1988 until 1991. There is nothing on record to show that these sealed covers were opened and acted upon. Since the effect of disciplinary

Cu

proceedings has been obliterated because of setting aside of the penalty order by this Tribunal, the natural corollary was that the sealed covers should have been opened and recommendations of the DPCs acted upon. Since no such action has been taken by the respondents, we are of the firm view that the respondents should be directed to open the sealed covers and act upon those recommendations and pass appropriate orders. If on account of this action, the applicant is found fit for confirmation before 1994, appropriate orders have to be issued and consequential benefits in terms of consideration of promotion by holding review DPCs have also to be considered. This exercise is necessary in view of the fact that the respondents have admitted that his juniors have been promoted as Stenographer Grade-II. The averment of the respondents that the DPCs which considered the applicant for promotion from 1989 onwards did not find him fit for promotion, is at variance with their submissions that DPCs held during this period for confirmation kept the recommendations in respect of the applicant in sealed cover. It is a well laid down procedure that if disciplinary proceedings are in progress, the recommendations of the DPCs have to be kept in sealed cover. It is, therefore, not clear as to why the recommendations of these DPCs were not kept in sealed cover. However, there is nothing on record to show that any prejudice has been caused to the applicant because of not following the sealed cover procedure.

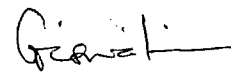
8. The applicant has submitted in his rejoinder that he had qualified the physical test and had appeared in the interview of 1988, but the findings of the DPC were kept in sealed cover because of non-issue of integrity certificate. The applicant has alleged that the sealed cover containing findings of the DPC has not yet been opened. In absence of any denial on the part of the

G

respondents, either through filing a reply to the rejoinder or while filing the written arguments, and also in view of the fact that no charge sheet was issued to the applicant until 1989, we are not inclined to reject this contention of the applicant. Accordingly, we direct the respondents to re-examine the minutes of the DPC which was convened in 1988, as contended by the applicant, and open the sealed cover, if the recommendations in respect of the applicant are found to have been kept in sealed cover. If it is so, the recommendations of this DPC have also to be acted upon and appropriate orders have to be passed by the respondents.

9. In view of the above discussion, we dispose of these OAs with a direction to the respondents to open sealed covers relating to the recommendations made by the DPCs held from 22.6.1988 till 1994 in respect of the confirmation of the applicant as Stenographer Grade-III and act upon those recommendations and pass appropriate orders. The respondents are also directed to open sealed cover, if any, of the DPC alleged to have been held in the year 1988 in respect of the promotion of the applicant to the post of Inspector and act upon these recommendations appropriately. The applicant will also be entitled to consequential benefits in case as a result of the aforesaid exercise the applicant is confirmed as Stenographer Grade-III before 1994 and/or is found eligible for promotion as a result of the recommendations of the DPC held in 1988. The entire exercise should be completed by the respondents within four months of the date of receipt of copy of this order. There will be no order as to costs. OAs disposed of accordingly.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

rkv

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
च तिलिधि जारी दिनांक :-

- (1) सचिव, उच्च न्यायालय वार एकाधिकार, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/शु.....के काउंसल
- (4) कथपाल, खेसडा, जबलपुर जिला, जिला सचिवालय एवं आवश्यक कार्रवाई हेतु

उप रजिस्ट्रार

DRSmd
on 3/11/07
By

B.P. Rao P.A.
S.P. Singh
P.A. 07/07/07 (2)