

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00596/2014

Thursday, this the 19th day of July, 2018.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

T.K.Haridas, aged 59 years
S/o T.K.Kochukunju
Inspector, Customs House
Kochi-9.

Applicant

(By Advocate: Mr.N.N.Sugunapalan, Sr/ Mr. S.Sujin rep by Mr.Navneet D.Pai)

versus

1. Commissioner of Customs
Customs House, Kochi-9
2. Chief Commissioner of Central Excise
Customs & Service Tax
Kerala Zone, Cochin-9.
3. Union of India represented by
Secretary to Government
Ministry of Finance,
Government of India
New Delhi.

Respondents

(By Advocate: Mr.N.Anilkumar, Sr.PCGC)

This OA having been heard on 17th July, 2018, the Tribunal delivered the following order on 19th July, 2018:

ORDER

By E.K.Bharat Bhushan, Administrative Member

This OA is filed by Sri T.K.Haridas, Inspector, Customs House, Kochi (subsequently retired) seeking promotion to the post of Superintendent, that had been denied by the inaction on the part of the 1st respondent. By MA 209/2017

allowed on 21.9.2017, the applicant was permitted to amend the OA by including certain subsequent developments such as the decision of the Hon'ble High Court in Writ Petition No.1689/14 (Annexure A6) and the representation made by the applicant before the 1st respondent (Annexure A7). The reliefs sought in the OA as per the amendment allowed are as follows:-

(i) Issue a direction to the 1st respondent to consider and pass appropriate order in Annexure A6 representation.

(ii) Issue directions to the respondent to grant all consequential promotions to which he was entitled to.

2. The applicant entered service as Inspector under the respondents on 2.5.1977. He claims that he belongs to 'Mala Araya' community which is an SC community. He had obtained employment on the basis of a caste certificate issued by the concerned authority. Subsequently, by way of an enquiry conducted by the KIRTADS and the report submitted to the Scrutiny Committee, it was concluded that the the applicant does not belong to the 'Mala Araya' but is a member of the 'Araya Community' which is not a Scheduled Tribe but an OBC Community. When the applicant was issued a notice of termination of service, he approached the Hon'ble High Court by filing Writ Petition No.26121/2008 and obtained a stay on operation of Annexure A1 order and continued in service. However, he did not get the benefit of any promotion till his retirement from service which occurred on 31.10.2014. The respondents challenged the order of the Single Judge by filing Writ Appeal (W.A.No.1689/14). The Writ Appeal was ultimately successful and the High Court upheld the action of the respondents in issuing the termination order on 4.6.2008 but the Court did not interfere with the benefits that had been granted till then and held that the order will only have prospective application. The

contention of the applicant is that he is entitled to be granted promotion denied to him in the period of his service upto 2008.

3. In the reply statement filed on behalf of the respondents, a detailed analogy of the case in question is offered. It is maintained that the applicant had obtained the appointment by submitting a fake caste certificate and he is not entitled to any benefit as the termination order challenged by the applicant had become final.

4. Heard Mr.S.Sujin, learned counsel for the applicant and Mr.N.Anilkumar, Sr.PCGC on behalf of the respondents. The applicant's case had come up for consideration before the Hon'ble Single Judge of the High Court as well as before the Division Bench. The conclusion arrived at by the High Court in the Writ Appeal No.1689 of 2014 is as follows:

“14. We make it clear that, by virtue of the declaration made by the Division Bench in Ext.P3 varied by Ext.P4 which has been ordered to give effect to forthwith, as it appears in paragraph 2 (v), the respondents are entitled to get all service benefits based on their length of service rendered under the Government/Employer till the date of passing Ext.P4, i.e., 4.6.2008, which shall not be denied to them under any circumstance. We also make it clear that, the scope of Ext.P4 order putting an end to the service will remain as a ' termination simplicitor' (which cannot be a ground to deny the service benefits flowing from the service already rendered till that date). It is declared accordingly.

15. In the result, Writ Appeal No.1689/2014 stands allowed. As a natural consequence, OP(CAT) No.71/2016 is also allowed and Ext.P3 verdict passed by the Tribunal stands set aside. It is left to the appellants in W.A.No.1689/2014 and the petitioners in O.P.(CAT) No.71/2016 to compute the benefits legally payable to the concerned respondents, taking the length of service rendered by them till 4.6.2008, the date of Ext.P4 order for the purpose of fixation of pension, gratuity, commuted value of pension, leave surrender and such other service benefits. The due amount shall be disbursed to them accordingly, without any delay. There shall not be any recovery of any amount by virtue of the declaration already made in Ext.P3. If any excess amount has already been paid, than their actual eligibility reckoning the period after 4.6.2008, it will be open for the Government/Employer to have it adjusted against the actual amount payable to the persons concerned.”

5. Reply statement had been filed by the respondents prior to the matter attaining finality in the form of disposal of the Writ Appeal in question. We feel that the respondents may be given an opportunity to consider the issue whether the applicant is eligible for promotion due to him prior to the order of termination. Allowing the first prayer made in the OA, a direction is issued to the 1st respondent to consider and pass appropriate orders on Annexure A7 representation. This shall be done taking into account the direction of the Hon'ble High Court in the Writ Appeal No.1689/14. This is to be done as expeditiously as possible and in any case within 30 days from the date of receipt of a copy of this order. With the above observations, the OA is disposed of. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures appended along with OA

Annexure A1: Copy of the order dated 4.6.2008.

Annexure A2: Copy of the order dated 30.5.2013 issued by the 1st respondent.

Annexure A3: Copy of the order dated 30.4.2014 issued by the 2nd respondent.

Annexure A4: Copy of the judgment in Writ Petition (C) No.26121/08.

Annexure A5: Copy of the judgment in W.A. No.1689/2010.

Annexure A6: Copy of the judgment in W.A. No.1689/2010.

Annexure A7: Copy of representation dated 10.10.2016.
