

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Wednesday 25th day of April Two Thousand And Eighteen

PRESENT:
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A./310/00546/2018

Mr. Bharath. R
S/o. Mr. P.N. Ramesh,
Flat SO1, Plot No. 36 & 37,
L&T Colony, CRR Puram,
Mugalivakkam Road,
Chennai- 600 116.Applicant

(By Advocate : M/s. J. Srinivasa Mohan)

VS.

The Commissioner of Customs,
Chennai VIII Commissionerate,
Custom House, No.60, Rajaji Salai,
Chennai- 600 001.

.....Respondents

(By Advocate: None)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard. This O.A has been filed by the applicant seeking the following reliefs:-

"a) to direct the respondents to pass orders on the representation of the applicant dated 13.2.2018, to include his name in the seniority list by taking into account his past service in Kolkata Customs House, as decided, accepted and implemented by CBEC, before proceeding with the DPC to make promotion to the post of Appraiser;

b) consequently, upon being included in the seniority list, direct the respondents to consider the applicant for promotion to the post of Appraiser in the DPC to be held shortly for the same

c) and to pass such other suitable orders as this Hon'ble Tribunal may deem fit in the circumstances of the case and render justice."

2. The case of the applicant is that he was selected and appointed to the post of Inspector (Examiner) (DR) in Kolkata Customs Zone which he joined on 22.2.2013. He was confirmed in the grade of Inspector (Examiner) on 22.2.2015. He applied for Inter-Commissionerate Transfer (ICT) from Kolkata Customs Zone to Chennai Customs Zone on 06.11.2017 on compassionate grounds on account of his parents' age and illness. The policy on ICT required a written undertaking to be given by the seeker of the transfer to abide by the terms and conditions thereof, failing which the officer would not even be considered for the ICT. Hence the applicant signed

a written undertaking on the prescribed lines so that he could be considered for ICT. His request was accepted and a transfer order dated 15.12.2017 was issued. Accordingly, he was relieved from Kolkata by an order dated 12.01.2018 and he joined Chennai Customs on 15.01.2018.

3. It is submitted that the applicant had completed 5 years of regular service in the grade of Inspector (Examiner) on 23.02.2018. On 05.02.2018, the Deputy Commissioner of Customs, Establishment, Chennai-VIII Commissionerate, issued a Draft Seniority list in the grade of Inspector (Examiner) in which the applicant's name did not figure, for the reason that his past services in Kolkata Customs Zone could not be taken into account in the light of the undertaking submitted by him to accept bottom seniority in Chennai. It is further stated that the law on counting of services rendered in the previous zone in such cases had already attained finality after a decision by the Hon'ble Supreme Court which the CBEC had accepted and implemented. Accordingly, an order granting seniority from the date of joining the parent Commissionerate, not only to the petitioners in the relevant case but also non-petitioners was issued in favour of all officers who had availed of ICT.

4. The applicant submitted a representation to the Cadre Controlling Authority, Chennai Customs Zone on 13.2.2018 requesting him to fix his seniority in the grade of Inspector (Examiner) in Chennai Customs Zone, taking into account the past service rendered by him on the post of Inspector (Examiner) from 22.2.2013 to 12.01.2018 in Kolkata Customs

Zone. Upon fixation of seniority as requested, the applicant would be eligible for promotion and accordingly the "Cadre Controlling Authority" was requested to consider him for promotion to the post of Appraiser in the ensuing DPC. The applicant submitted a reminder on 19.03.2018 but no reply had been received till date. However, the respondents issued a combined eligibility list of Inspector (Examiners) of Chennai, Cochin and Vizag wherein the name of applicant did not figure inspite of his earlier representation and reminder against the tentative seniority list. As the seniority of Appraiser is determined from the date of promotion, whoever is promoted first will become senior, which will adversely impact the claim of the applicant. The applicant accordingly seeks an appropriate direction in this regard.

5. Learned counsel for the applicant would allege that the undertaking 'forcibly extracted' from the applicant regarding seniority was illegal inasmuch as this Tribunal by an order dated 3.08.2012 in O.A. No.338/PB/2012 had held that the applicants therein were entitled to service rendered in their parent Commissionerate. An appeal thereagainst was dismissed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No. 25662/2012 dated 21.01.2013. The SLP filed thereagainst was dismissed by the Hon'ble Apex Court on 23.2.2017. Thereafter, the CBEC by order dated 3.08.2017 had directed the implementation of the order in respect of petitioners as well as non-petitioners working under the CBEC. As the issue has now attained finality, the applicant is entitled to the benefit of

reckoning his past service. Accordingly the respondents ought to revise the seniority of the applicant in the Chennai Zone which has not been done so far.

6. It is further submitted that the respondents are now considering promotions from the post of Inspector to Appraiser in which the applicant's claims are being overlooked notwithstanding the aforesaid legal position. The applicant, therefore, submitted Annexure A-18 representation, dated 13.2.2018 followed by Annexure-A20 reminder, dated 19.03.2018 seeking re-fixation of seniority, which have not been responded to. Accordingly, the applicant would be satisfied if the respondents are directed to consider his representations within a time limit to be set by the Tribunal and defer further action on promotion from Inspector to Appraiser till then.

7. I have considered the submissions in the light of the documents and prayer made in the O.A.. It is clear that the applicant's representation dated 13.2.2018 followed by a reminder dated 19.3.2018 are still pending with the authorities. In case the applicant's claim is correct, omission of his name from the list of persons to be considered for promotion in the ensuing DPC would certainly be unjust. I am, therefore, of the view that without going into the substantive merits of the claim of the applicant at this stage, the respondents could be directed to consider his Annexure-A18 representation dated 13.2.2018 followed by Annexure A20 reminder dated 19.03.2018 in accordance with law and the CBEC order dated 3.8.2017 and pass a reasoned and speaking order within a period of six weeks from the date of

receipt of copy of this order. The applicant would be entitled to consequential benefits in the event of the competent authority finding merit in the representation and revising his seniority accordingly and in the event of any promotions being made on the basis of the existing seniority list in the meantime.

8. The O.A. is disposed of with the above direction. No costs.

(R. RAMANUJAM)
MEMBER(A)

25.4.2018

asvs.