

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00698/2017

Thursday, this the 28th day of March, 2019

CORAM:

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

A. Lakshmikanthan, aged 49 years, S/o. A. Arunachalam,
Superintendent of Central Excise, O/o. The Principal Commissioner of
Central Excise, I.S.Press Road, Cochin, presently working as Senior
Intelligence Officer, O/o. The Directorate General of Goods & Services
Tax Intelligence, Coimbatore Zonal Unit, Coimbatore (on deputation),
residing at 2E, Good Home,(Mani Mahal) Apartments, Sowripalayam
Road, Puliyakulam, Coimbatore – 45. **Applicant**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by Chairman, Central Board of Excise and Customs, New Delhi.
2. The Chief Commissioner, CGST & Central Excise, Central Revenue Buildings, I.S. Press Road, Cochin – 682 018.
3. The Principal Commissioner, CGST & Central Excise, Cochin, Central Revenue Buildings, I.S. Press Road, Cochin – 682 018. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 19.03.2019 the Tribunal on 28.03.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “(i) To call for the records relating to Annexure A1 to A10 and to quash A1;

(ii) To declare that the review DPC is to be held on the DPC held on 20.7.2004 and not on the DPC held on 26.7.2002;

(iii) To direct the respondents to review the DPC held on 20.7.2004 within the extended panel and to recommend the promotions based on the panel considered therein;

(iv) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

And

(v) To grant the costs of this Original Application.”

2. The brief facts of the case are that the applicant joined the service of the Department on 25.4.1994 as a direct recruit Inspector after qualifying in the SSC recruitment. He belongs to Scheduled Caste community. In the year 2006 he has been promoted as Superintendent. Presently the applicant is working as Senior Intelligence Officer in the O/o. the Directorate General of Central Excise Intelligence, Coimbatore Regional Unit, Coimbatore from 22.8.2013 onwards on deputation from Cochin Central Excise Zone. During the restructuring process initiated in CBEC in the year 2002, there was shortage of reservation category officers with qualifying service of 8 years in the Inspector cadre for promotion as Superintendent. In the DPC conducted on 26.7.2002 the DPC considered the eligibility service as 8 years and the zone of consideration has been arrived based on the guidelines on the subject. Since the officials with 8 years regular service in the cadre were very few, Ministry of Finance has issued instructions granting one year relaxation in qualifying service against the restructuring vacancies. Accordingly, the applicant became eligible to be considered for promotion as Superintendent of Central Excise & Customs on 24.5.2001. However, the name of the applicant was not considered for promotion. In the

supplementary DPC conducted on 17.12.2002, it considered 55 vacancies out of which 28 vacancies are unfilled vacancy of previous DPC held on 26.7.2002 and 27 unanticipated vacancies. It appears that out of 55 posts, 28 posts are unfilled vacancies of previous DPC i.e. DPC dated 26.7.2002 wherein consideration zone for SC/ST officers are drawn for 5 times on the number of vacancies. Whereas while conducting supplementary DPC for these 28 unfilled posts along with 27 numbers of unanticipated vacancies, the zone of consideration was restricted to SC/ST officers for five times of these 55 posts. Thereafter in the review DPC conducted on 20.7.2004, DPC stated that 6 officers (SC cadre) offered promotion as per DPC dated 26.7.2002 had refused promotion as Superintendent and drawn extended panel of 6 SC candidates in lieu of the refused officers who cannot be promoted during the year 2002-2003. Accordingly, the applicant was considered. Final review DPC was conducted on 13.12.2016 as a result of the judgment of the Hon'ble High Court in WP(C) No. 22956/2007. Now the DPC had taken a stand that since the original DPC dated 26.7.2002 had not prepared extended panel, it decided not to draw up an extended panel. As a result the applicant being eligible and entitled promotion is declined of the same. Aggrieved the applicant has filed the present OA.

3. Notices were issued to the respondents. Mr. N. Anilkumar, SCGSC entered appearance on behalf of the respondents and filed a detailed reply statement contending that the recommendations of the review DPC held on 20.7.2004 were not implemented on account of the stay order dated 20.7.2004 passed by this Tribunal in OA No. 530 of 2004. Later the review

DPC meeting held on 20.7.2004 was further reviewed on 29.9.2004 consequent upon the deemed sanction of 14 posts of Superintendents with effect from 5.6.2002. The recommendations of the review DPC meeting held on 29.9.2004 was also not implemented in view of the stay order passed by the this Tribunal in the above OA No. 530 of 2004. The order in OA No. 530 of 2004 was challenged before the Hon'ble High Court in WP(C) No. 22956 of 2007 wherein the Hon'ble High Court upheld the one year relaxation in qualifying service granted by the Ministry vide instruction dated 18.6.2004. Accordingly, in view of the said judgment a review DPC meeting was held on 13.1.2016 to implement the recommendations of the review DPC meeting held on 29.9.2004 for promotion of Inspectors of Central Excise to the grade of Superintendents of Central Excise Group B. Thus, it is clear that the last review DPC meeting held on 29.9.2004 is to be implemented. The review DPC meeting held on 20.7.2004 could not consider the 14 additionally sanctioned posts by CBEC since the Board's instruction regarding sanction of 14 additional posts was issued only on 8.9.2004. The review DPC meeting held on 20.7.2004 had prepared extended panel against the refusal of promotion by the 6 officers originally included in the panel of DPC meeting held on 26.7.2002. The proceedings of the review DPC meeting held on 20.7.2004 were again reviewed on 29.9.2004 consequent to deemed sanction of 14 additional posts in the cadre of Superintendents. This review DPC observed that since the original DPC meeting held on 26.7.2002 had not drawn an extended panel therefore, decided not to draw extended panel and had drawn a panel of 117 officers against 124 vacancies for promotion. The DPC held on 13.12.2016 observed

that none of the officers who were empanelled for promotion under reservation category against cadre restructuring vacancy had refused promotion on earlier occasions or were under debarment for promotion as on date of the original DPC dated 26.7.2002. As per paragraph 2 of DOP&T's OM dated 9.4.1996 the DPCs shall prepare an extended panel only in the following contingencies:

- “i. When persons included in the panel are already on deputation or whose orders of deputation have been issued and will be proceeding on deputation shortly for more than a year or
- ii. When persons included in the panel have refused promotion on earlier occasions and are under debarment for promotion or
- iii. When officers included in the panel are retiring within the same year, provided there is no change in the zone of consideration by the expected date of their retirement.”

Therefore, as per the above OM dated 9.4.1996 the DPC is not required to draw extended panel in lieu of officers who had declared promotion subsequently against cadre restructuring vacancies in the DPC meeting held on 26.7.2002. Further the review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should not change the zone of consideration or take into account any increase in number of vacancies which might have occurred subsequently. In the instant case the six officers were offered promotion for the first time only in 2002 as per the recommendation of the DPC meeting held in 26.7.2002. Therefore, the DPC could not draw extended panel against the six officers as they were included in the original panel and there was no refusal of promotion by these officers as they were not offered promotions earlier. The review DPC meetings held on 29.9.2004 and 13.12.2016 observed that none of the officers who were empanelled for

promotion under reservation category against cadre restructuring vacancy had refused promotion on earlier occasions or were under debarment for promotion as on the date of the original DPC dated 26.7.2002. Respondents pray for dismissing the OA.

4. Heard Shri Shafik M.A., learned counsel appearing for the applicant and Shri N. Anilkumar, SCGSC learned counsel appearing for the respondents at length. Perused the record.

5. The basic thrust of argument lead by Shri Shafik is that the applicant being a Scheduled Caste candidate should have been considered against the vacancies available on account of refusal by six Scheduled Caste selected candidates to the post of Superintendents as the review DPC conducted for the vacancies of 2002 is in the year 2004. The applicant should have been given the post of Superintendent from 2004 itself when vacancies were available and DPC should have treated 2004 DPC not the DPC for 2002 vacancies.

6. He further submitted that due to non-availability of the requisite number of Scheduled Caste candidates for promotion, the department itself sought relaxation in 8 years service because of the restructuring of the cadre and Ministry of Finance has granted relaxation for one year for reserved candidates which meant for filling up the vacancies for want of candidates.

7. On the contrary Shri Anilkumar, SCGSC had strenuously argued and drawn our attention to Annexure A3 wherein the Ministry of Finance had granted the relaxation exclusively for restructured vacancies alone as a one time measure only. The relevant portion of Annexure A3 is extracted below:

“2. Accordingly, the matter has been examined carefully and it has been decided with the approval of the Hon'ble Finance Minister to accord one year relaxation in qualifying service as prescribed in the Recruitment Rules for filling up of Group B Ministerial and non-Ministerial posts which were created as a result of cadre restructuring of Customs and Central Excise Department. You are therefore, requested to conduct a review DPC for filling up of the entire Group B posts by relaxing the qualifying service prescribed under the Recruitment Rules by one year. The review DPC may be held exclusively for the vacancies that arise as a result of posts created due to cadre restructuring and the zone of consideration should not be extended by taking into account the normal vacancies available at that time and the zone of consideration should be prepared taking into account only the vacancies which had arisen as a result of cadre restructuring.”

He further submitted that the Scheduled Caste candidates who refused promotion in 2002 vacancies are debarred for promotion for one year only but after one year they are eligible for reconsideration for promotion and those SC candidates who refused promotion were debarred for one year and thereafter they have been re-considered and on selection they were given promotion in the year 2004 and not from the date of their initial date of selection i.e., 2002. He also submitted that applicant was not in the zone of consideration in the year 2002 and only after relaxation was given he became eligible. So the applicant is not entitled for promotion against 2002 vacancy even on refusal by the Scheduled Caste candidates. In this regard he has cited the DPC recommendations at Annexure A6. The relevant part is extracted below:

“The Committee was informed that Smt. Achamma Varkey was not considered for promotion by the original DPC held on 26.7.2002 as she had not completed the qualifying service prescribed at that time and that on account of relaxation of qualifying service now granted, she is eligible

to be considered now. The committee was further informed that though she had refused promotion granted to her based on the findings of the DPC held on 9.12.2003, she can be considered for promotion for the previous year i.e. 2002-2003 but actual promotion can be given only on expiry of one year from the date of refusal i.e. 17.12.2003.

The Committee observed that necessary integrity certificates have been furnished. Based on the findings, the committee recommended the following panel of officers for promotion to the grade of Superintendent of Central Excise against the vacancies that arose as a result of posts created due to cadre restructuring.”

Learned counsel for the respondents had cited two decisions of the Hon'ble apex court in ***Government of Andhra Pradesh & Ors. v. M.A. Kareem & Ors.*** - 1991 SCC (L&S) 1206 and ***K.R. Mudgal & Ors. v. R.P. Singh & Ors.*** - AIR 1986 SC 2086 wherein it was held that Courts and Tribunals should be slow in disturbing the settled affairs in a service for such a long period i.e. position settled 13 years back could not be unsettled.

8. It is seen from the records that DPC was conducted for 124 posts out of which 15 posts were regular and 109 for restructuring vacancies. Thus, it is very clear that relaxation is a one time measure for the restructured vacancies alone. The DPC was delayed due to the stay granted by this Tribunal and the Hon'ble High Court of Kerala had ultimately allowed to fill up the vacancies by relaxing the eligibility criteria for one year. As on 26.7.2002 DPC did not allow the extended panel on any account, refusal etc. As claimed by the applicant that he should have been considered against the refusal vacancies, we find that there was no refusal on the part of Scheduled Caste candidates prior to 26.7.2002 i.e. the date of the original DPC. Therefore, the extended panel has not been drawn and only 124 vacancies were taken into account for promotion.

9. In view of the above we find no infirmity in the DPC proceedings dated 26.7.2002 which had correctly followed the criteria and instructions so issued by the Government. Further the role of the Tribunal is very limited in the matter of recommendation by the DPC which is statutory in nature. Therefore, we conclude that there is no discrimination while assigning the date of promotion to the applicant subsequently when he actually became eligible and vacancies in Scheduled Caste category were available. The OA has no merits and it is accordingly, dismissed. Parties shall bear their own costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00698/2017**APPLICANT'S ANNEXURES**

- Annexure A1** - True copy of the order C.No. II/39/1/2006 Pt.I-Conf.Cx/481/17 dated 3.4.2017 issued by the 3rd respondent.
- Annexure A2** - True copy of the OM No. 22011/1/90-Estt.(D) dated 22.4.92 issued by the DOP&T.
- Annexure A3** - True copy of the letter No. A.60011/24/2003-AD-IIB dated 18.6.2004 issued by the CBEC.
- Annexure A4** - True copy of the minutes of the DPC dated 26.7.2002.
- Annexure A5** - True copy of the OM No. 22011/2/2014-Estt.D dated 30.1.2015 issued by the DOP&T.
- Annexure A6** - True copy of the minutes of the DPC dated 20.7.2004.
- Annexure A7** - True copy of the minutes of the DPC dated 29.9.2004.
- Annexure A8** - True copy of the minutes of the DPC dated 13.12.2016.
- Annexure A9** - True copy of the OM No. 1/3/69-Estt(D) dated 22.11.1975 issued by the DOP&T.
- Annexure A10** - True copy of the OM No. 22011/18/87-Estt(D) dated 7.4.1996 issued by the DOP&T.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-