

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00360/2018

Date of Order: This, the 25th day of October 2018

(VACATION BENCH COURT)

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Smt. Sujata Dam
W/o Sri Abhijit Banik
Flat No. 3-C "Gokul Dham"
House No. 25, Kanaklata Path (Opp. B.T. College)
Lachit Nagar, Guwahati- 7.

...Applicant

By Advocates: Mr. A. Ahmed & Mr. H. Das

-Versus-

1. The Union of India
Through the Secretary to the Government of India
Revenue Department
Ministry of Finance, New Delhi- 110001.
2. Central Board of Excise and Customs
Represented by its Secretary
Ministry of Finance, New Delhi - 110001.
3. The Chief Commissioner
Office of the Goods and Service Tax and Customs, NE
Region,
Crescens Building, M.G. Road, Shillong
Meghalaya – 793001.
4. The Commissioner of Goods and Service Tax
Guwahati Commissionerate
Sethi Trust Building, Bhangagarh, Guwahati
Assam – 781005.

5. The Commissioner of Goods and Service Tax and Customs (Audit), Guwahati Commissionerate
Nilomoni Ohukan Path, Christian Basti, Guwahati
Assam – 781005.
6. The Additional Commissioner
O/o The Chief Commissioner
Central Excise, Customs and Service Tax, NE Region
Crescens Building, M.G. Road, Shillong
Meghalaya – 793001.
7. Dipankar Dutta
O/o the Commissioner of CGST
Bhangagarh, Sethi Trust Building
Guwahati – 781005.
8. Hemankar Roy
O/o the Commissioner of CGST
C.R. Building
Opp. Circuit House
Silchar, Pin – 788001.
9. Rajat S. Sengupta
O/o Commissioner of Customs
Station Road, Karimgangj
Pin – 788710.
10. Majid Alam
O/o the Superintendent
CGST, Golaghat Range – I
P.O. Golaghat, Dist. Golaghat
Assam, Pin – 785621.
11. Chakreswar Sharma
O/o the Commissioner of CGST
Bhangagarh, Sethi Trust Building
Guwahati – 781005.

...Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC

ORDER (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

Being aggrieved with the impugned establishment order Number 35/2018 dated 10.10.2018 whereby all the private respondents have sought to be placed above the applicant in the draft seniority list as on 01.04.2013, the applicant has preferred the instant petition under Section 19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:

- “8.1 That the Hon'ble Tribunal be pleased to set Aside and quashed the impugned establishment order No. 35/2018 dated 10.10.2018 (Annexure – A1).
- 8.2 That the Hon'ble Tribunal be pleased to declare that, the applicant is senior to respondents No. 7,8,9,10 and 11 in the cadre of Inspector, Central Excise, Custom and Service Tax, with a further direction upon the respondents to make necessary correction in the Draft Seniority list of Inspector as on 01.04.2015, issued vide Circular bearing letter No. II(34)3/ET/CCO/SH/2013/11828-1190 dated 23.02.2016 which directed to be finalized within a period of 6 (six) months keeping in view the DOPT OM dated 04.03.2014 vide judgment and order dated 08.11.2017 passed in O.A. No. 215/2016.
- 8.3 That the Hon'ble Tribunal be pleased to direct the respondents not to consider promotion of the respondents No. 7,8,9,10 and 11 for promotion to the post of Superintendent Group B till necessary correction is made, placing the

applicant above the respondent No. 7, 8, 9, 10 and 11 in the seniority list of the cadre of Inspector in terms of prayer No. 8.2.

8.4 Costs of the application.

8.5 Any other relief(s) to which the applicant is entitled as the Hon'ble tribunal may deem fit and proper.

2. It was submitted by Mr. Adil Ahmed, learned counsel for the applicant that impugned establishment order No. 35/18 dated 10.10.2018 was issued in an illegal and arbitrary manner inasmuch as the private respondent Nos. 7,8,9,10 and 11 could not qualified in the departmental examination which is a statutory requirement for promotion to the postal Inspector of Central Excise and Custom as per prevailing recruitment rules, 2002, which was holding the field at the relevant point of time, whereas, when the applicant had cleared the said departmental examination in the year 2001, as such applicant was promoted as Inspector on 27.10.2003, therefore respondent No. 7,8,9,10 and 11 who had cleared the departmental examination in the year 2004 and 2005 although granted ante-dated seniority following judgment and order dated 24.01.2014 passed in O.A. No. 182 of 2011 as well as following judgment and order dated 14.11.2017, passed in O.A. No. 307/2017, declaring the respondent No. 7,8,9,10 and 11,

promoted w.e.f. 27.10.2003, vide establishment order No. 190 of 2014 dated 17.11.2014 and also vide establishment order No. 35/2018 dated 10.10.2018, but on account of their passing of departmental examination in the year 2004/2005, they cannot be declared senior to the present applicant in the draft seniority list published as on 01.04.2013 as well as on 01.04.2015 as ordered in the impugned establishment order dated 10.10.2018. Therefore, this Tribunal be pleased to declare that the applicant is senior to the respondent No. 7,8,9,10 and 11 with a further direction upon the respondents to make necessary correction in the draft seniority list of Inspector as on 01.04.2013 as well as in the draft seniority list on 01.04.2015, which are also likely to be finalized, pursuant to the judgment and order dated 08.11.2017, passed in O.A. 215 of 2016.

3. Mr. Ahmed further submitted that assigning seniority of the respondents No. 7, 8, 9, 10 and 11 over and above the applicant in the grade of Inspector is highly arbitrary, illegal and opposed to the law of the land. Accordingly, Mr. Ahmed prays for a direction upon the respondents to consider the case of the applicant and pass necessary order placing the applicant above the private respondents No. 7, 8, 9, 10 and 11 and till such consideration restrain the respondents from

considering private respondents for further promotion to the cadre of Superintendent Group B.

4. Mr. Ahmed fairly submits that before issuance of impugned establishment order No. 35/2018 dated 10.10.2018, the applicant also made representation on 03.10.2018 with a prayer for restoration of her seniority above private respondents No. 7, 8 and 9 i.e. which is still pending with the respondents. According to Mr. Ahmed he has no objection if a direction be issued to the respondents to consider and dispose of the pending representation dated 03.10.2018 and till consideration of the said representation no promotion shall be held.

5. Mr. R. Hazarika, learned Addl. CGSC appearing on behalf of the respondents suggested to send back the matter to the department to dispose of the representation dated 03.10.2018 made by the applicant.

6. By accepting the prayer made by the both learned counsel and without going into the merit of the case, I direct the respondent authority to consider and dispose of the said pending representation dated 03.10.2018 within a period of two months and pass necessary orders by taking into note the facts and circumstances of the case of the applicant thereafter.

6. It is made clear that, whatever decision to be arrived by the respondent authorities, shall be reasoned and speaking and shall be communicated to the applicant forthwith. Any promotion of the private respondents will be made subject to the decision of the representation.

7. O.A. stands disposed of accordingly at the admission stage itself. No order as to costs.

(MANJULA DAS)
MEMBER (J)

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