

**Central Administrative Tribunal
Principal Bench**

OA No.1689/2018

MA No.5212/2018

MA No.3632/2018

MA No.5211/2018

New Delhi, this the 28th day of January, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Rachin Mittal
Aged about 33 years,
S/o Shri Satish Mittal
R/o Flat No.B/5/204,
Hawares Green Park, Sector-22,
Kamothe-410209, Navi Mumbai
(working as (Preventive Officer : Group 'B'). ... Applicant.

(By Advocate : Shri Sachin Mittal)

Vs.

1. Union of India
Through its Secretary
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. The Chairman
Central Board of Excise & Customs
Ministry of Finance,
North Block,
New Delhi.
3. Commissioner of Customs (General)
New Chairman House,
Ballard Estates,
Mumbai 400 001. ... Respondents.

(By Advocates : Shri K. M. Singh, Shri R. K. Sharma and Shri M.
K. Bhardwaj)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant was appointed as Preventive Officer in the Central Board of Indirect Taxes, Ministry of Finance, Government of India on, 27.01.2011, by way of direct recruitment. There is also a channel of promotion to the post of Preventive officer.

2. On completion of eight years of service in that post, a Preventive Officer acquires eligibility to be considered for promotion to the post of Superintendent of Customs. The applicant states that his appointment was referable to the Panel year 2008 and even while denying promotion to him as Superintendent on the ground that he did not put in the required eight years of service, his juniors especially from the promotion category, are promoted as Superintendents, through various orders, including the one dated 23.06.2017. He submits that the view taken by the respondents is contrary to certain principles of law, and the norms contained in Office Memorandum dated 25.03.996 issued by the DoP&T, apart from the judgment of Hon'ble Delhi High Court in ***Union of India and Ors. vs. Rajeev Kumar and Ors.*** W.P. (C) No.7743/2018 decided on 29.10.2018.

3. On behalf of the respondents, a counter affidavit is filed. They raised serious objection as to the territorial jurisdiction of this Bench to entertain the OA. According to them, the applicant is an officer working in Mumbai and the orders of promotion were also issued by the concerned authority at that place.

Reference is made to an office objection raised in this OA and sustained by the Tribunal.

4. As regards the orders that are challenged in this OA, it is stated that first one dated 05.04.2018 does not pertain to the applicant and the 2nd one dated 23.06.2017 cannot be challenged unless the persons promoted through the said order are made parties to the OA.

5. We heard Shri Sachin Mittal, learned counsel for the applicant, Shri K. M. Singh, Shri R. K. Sharma and Shri M. K. Bhardwaj, learned counsel for the respondents.

6. A serious objection is raised as to the territorial jurisdiction of this Bench to entertain the OA. It is true that the applicant is working at Mumbai, and promotions to higher posts are effected by an authority at that place only. The Tribunal has also sustained an objection raised in this behalf. However, at a later point of time, i.e., on 02.05.2018, it was noted that the applicant is questioning an order Annexure A-1 issued by the respondents from Delhi. A perusal of the said order discloses that it does not at all pertain to the applicant. Once, the OA was entertained by this Bench and the respondents have also filed counter affidavits, we do not feel it appropriate to refuse to adjudicate the OA on the grounds of territorial jurisdiction, at this stage.

7. Coming to the merits of the matter, the grievance of the applicant is about denial of promotion to him, to the post of

Superintendent of Customs. It is not in dispute that eight years of service in the post of Preventive Officer is necessary for one to become eligible for promotion, and that the applicant does not have that length of service. In the seniority list, the direct recruits on the one hand, and the promotees on the other hand, are interspersed. It appears that the appointments were referable to the panel Year 2008. While the promotions were effected in that year itself, the direct recruitment was delayed by about two years. Though the applicant stated that he joined the service on 27.01.2011, he did not mention the date on which he was issued the order of appointment.

8. The applicant placed his reliance upon the OM dated 25.03.1996. The question as to whether the same applies to the service in CBIT or whether there exist any recruitment rule to the contrary, needs to be examined. Added to that, if the applicant is to be promoted, the affected persons also need to be given opportunity of being heard. Further, the issue does not pertain to the applicant alone. A deeply thought of policy decision needs to be taken. As the things stand now, neither the applicant made a representation ventilating his grievances, nor was there any occasion for the respondents to address them.

9. Another complexity is that there is absence of uniformity in the dates of joining of the direct recruits themselves. While some have completed eight years, others have not. All these aspects need to be taken into account. The occasion to extend the

benefit of relaxation of the required length of service, upto a limit, to enable a senior to get promoted on par with his junior in the feeder category would arise only when the senior could not put in the needed length of service due to reasons not attributable to him. If he was at fault, he cannot get the benefit. For example, if the shortage is due to his delayed joining, even while, others appointed with him joined promptly and got eligibility, he cannot get the benefit. These aspects need to be verified with reference to the relevant record.

10. We, therefore, leave it open to the applicant to make a comprehensive representation, furnishing all the details and make a request to promote him to the post of Superintendent, duly citing the relevant OM or rules within four weeks from today. The respondents to take further steps thereon within a period of six weeks thereafter. The OA is accordingly disposed of.

11. We, however, make it clear that if the applicant intends to pursue further remedies, he shall do so before the Bench of the Tribunal at Mumbai, so that it would be convenient for the contesting respondents to put forward their contentions and would save the time and money for the applicant also.

All the pending MAs stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/