

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01016/2016

Friday, this the 19th day of July, 2019

CORAM:

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

V.T.K. Nayanar, S/o. Shri M.P. Narayanan Namboodiri,
aged 63 years, Commissioner of Central Excise & Customs (Retd.),
2A, Jomer Haven Apartments, Illom Road, Paliyam Road Cross,
Ernakulam, Cochin – 682 016. **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by the Secretary,
Department of Revenue, North Block, New Delhi – 110 001.
2. Chairman, Central Board of Excise & Customs,
North Block, New Delhi – 110 001.
3. Secretary to the Government of India,
Department of Personnel and Training,
North Block, New Delhi – 110 001. **Respondents**

(By Advocate : Mr. E.N. Hari Menon, ACGSC)

This application having been heard on 15.07.2019, the Tribunal on
19.07.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant is as under:

“(i) To direct the respondents to grant Non Functional Upgradation (NFU) to the grade of Chief Commissioner of Customs & Central w.e.f. 2.7.2013, the date on which his junior was granted NFU and grant all consequential benefits including leave encashment and other retirement benefits within a stipulated period.

(ii) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(iii) Grant cost of this OA.”

2. The brief facts of the case are that the applicant joined the Indian Revenue Service (Customs & Central Excise) on 1.9.1981 as a direct recruit. After 32 years of service he retired on superannuation on 30.9.2013 as Commissioner of Central Excise & Customs, Madurai Commissionerate under Coimbatore Zone in Tamil Nadu. The Government vide Annexure A1 decided to grant non-functional upgradation to officers of organized Group-A service in PB3 and PB4. Accordingly, the 2nd respondent issued the list of eligible candidates for grant of NFU. The applicant's name finds place at Sl. No. 20 in the 1981 batch. The respondents vide Annexure A5 granted the non-functional upgradation to 24 officers of 1981 batch. However, the applicant was not granted. Aggrieved the applicant sent a letter to the 2nd respondent on 10.9.2016 which did not result any response. The applicant on enquiry with 2nd respondent was informed that he was denied the non-functional upgradation due to the pendency of disciplinary proceedings. The same is incorrect as the charge memo was issued to the applicant on 27.9.2013 just two days prior to his superannuation. As on 2.7.2013 on which date his junior was granted non-functional upgradation the applicant was not issued with any charge sheet. Moreover, the applicant's name was cleared by the DPC held on 21.6.2013 for promotion to the post of Chief Commissioner of Central Customs and Central Excise. Therefore, the denial of non-functional upgradation to the applicant is absolutely illegal and

arbitrary.

3. Notices were issued to the respondents. Shri E.N. Hari Menon, ACGSC took notice on behalf of the respondents and filed a short reply statement on behalf of the respondents. The only contention made by the respondents in the reply statement is that the name of the applicant was considered along with 1981 batch officers for grant of non-functional upgradation in HAG in the departmental screening committee held on 11.2.2016 under the Chairmanship of Revenue Secretary. However, the departmental screening committee deferred its assessment in respect of the applicant for want of updated vigilance status and therefore, the applicant was not granted non-functional upgradation. Respondents pray for dismissing the OA.

4. Heard Shri C.S.G. Nair, learned counsel for the applicant and Shri E.N. Hari Menon, ACGSC learned counsel appearing for the respondents. Perused the record.

5. The short point to be considered in this matter is whether there was any charge memo issued to the applicant on 2.7.2013 i.e. the date on which his junior was granted non-functional upgradation ?

6. The applicant in the OA contended that on 2.7.2013 when his junior was granted non-functional upgradation no charge sheet was pending against him. As stated by the applicant the charge sheet was issued to the

applicant only on 27.9.2013 just two days prior to his superannuation. Further we find that the applicant's name was cleared by the DPC for promotion to the post of Chief Commissioner, Central Customs and Central Excise in its meeting held on 21.6.2013. In Annexure 1 to Annexure A7 the DPC had assessed the applicant as a fit officer for empanelment and his name was included in the panel for the year 2013-2014. This fact has not been denied by the respondents in the reply statement filed by them. Moreover, we find that the only ground taken by the respondents in the reply statement is that the departmental screening committee deferred its assessment in respect of the applicant for want of updated vigilance status in its meeting held on 11.2.2016. In the present case the applicant retired from service on 30.9.2013 as Commissioner, Central Excise & Customs and the respondents started the process of granting non-functional upgradation to eligible officers only after the retirement of the applicant. Therefore, we find that there was no charge memo issued to the applicant on 2.7.2013 i.e. the date on which applicant's junior was granted non-functional upgradation.

7. The Hon'ble apex court in *Union of India & Ors. v. Anil Kumar Sarkar* – Civil Appeal No. 2537 of 2013 dated 15th March, 2013 held that departmental proceeding is normally said to be initiated only when a charge sheet is issued.

8. In view of the above discussion we hold that the applicant is entitled to non-functional upgradation to the grade of Chief Commissioner of Customs

& Central with effect from the date on which his junior was granted non-functional upgradation, if he is otherwise eligible. The respondents shall grant all consequential benefits including leave encashment and other retirement benefits to the applicant within a period of three months from the date of receipt of a copy of this order.

9. The Original Application is disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** – True copy of OM No. 14017/64/2008-Estt.(RR) dt. 24.4.2009.
- Annexure A2** – True copy of the OM No. AB.14017/64/2008-Estt.(RR) dt. 25.9.2009.
- Annexure A3** – True copy of the order No. A32012/20/2014-Ad.II dt. June, 2014.
- Annexure A4** – True copy of the letter F. No. A 12018/3/2014-As II dated 8.12.2014 issued by the 2nd respondent.
- Annexure A5** – True copy of the office order No. 50/2016 dt. 2.5.2016.
- Annexure A6** – True copy of the letter dt. 10.9.2016.
- Annexure A6** – True copy of the letter No. F-1/15(15) 20113 – AP.2, dt.25.6.2013 along with the minutes.

RESPONDENTS' ANNEXURES

Nil

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