

CENTRAL ADMINISTRATIVE TRIBUNAL**JODHPUR BENCH**

...

OA No.290/00320/2014**Pronounced on : 01.08.2019****(Reserved on : 16.07.2019**

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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S.R. Choudhary, S/o Late Shri Balbir Singh, aged about 56 years, R/o Quarter No.19, Custom Colony, Panch Bati Circle, Ratanada, Jodhpur. Presently working on the post of Sr. Technical Assistant in the office of Additional Commissioner of Customs, Jodhpur.

...APPLICANT

BY ADVOCATE : Mr. S.K. Malik

VERSUS

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. The Commissioner, Directorate of Logistics, Custom & Central Excise, Lok Nayak Bhawan, 4th Floor, 'A' Wing, Khan Market, New Delhi.
3. The Commissioner, Central Excise Commissionerate, 1st NCR Building, Statute Circle 'C' Scheme, Jaipur.
4. Smt. L.G. Latha Superintendent (M), Commissionerate of Custom and Central Excise Trichy (Tamil Nadu).

RESPONDENTS

BY ADVOCATE: Mr. Nimesh Suthar for R1 to R3
None for R4.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

- "i). By an appropriate writ, order or direction impugned order dated 08.08.2014 (Annexure A1) be declared illegal and be quashed and set aside.
- ii) By an order or direction respondents may kindly be directed to Order review DPC for promotion to the post of Group 'B' Supdt.(M) and consider the case of the applicant to the said post and grant promotion with effect from the persons junior to the applicant have been granted promotion to the post of Group 'B' Supdt. (M) with all consequential benefits including arrears of pay and allowances along with 12% interest.
- iii) By an order or direction exemplary cost be imposed on the respondents for causing undue harassment to the applicant."

2. This OA has been made against the impugned order No.4A/1-CR/S-204/Comns/270, dated 08.08.2014 (Annexure A1) passed by respondent no.2 wherein the applicant's case for promotion to the post of Superintendent (M) is not considered, whereas juniors have already been promoted.

3. The facts of the present case as narrated by the applicant are that the applicant was initially appointed on the post of Radio Technician with effect from 08.12.1982 in the pay scale of Rs.5000-8000/-. Thereafter, he was promoted on the post of Technical Assistant (TA) with effect from 17.07.1987 in the Revised Pay scale of Rs.5500-9000/- and after again he was promoted on the post of Senior Technical Assistant (STA) with effect from 10.09.2003 in the pay scale of Rs.5500-9000/-. Posts of TA & STA are merged with effect from 01.01.1996 as per 5th CPC and the pay of the applicant was fixed as Rs.5500-9000/- w.e.f. 01.01.1996. The respondent Department issued notification dated 18.01.2000 of Recruitment Rules of Group 'B' post in Telecom Wing of Custom & Central Excise (Annexure A2). As per recruitment rules, respondents issued a letter dated 27.07.2005 for consideration for promotion to Group 'B' post wherein the name of applicant was shown at Sr.No.5 and another name of L.G. Latha has been shown at Sr.No.17 (Annexure A3). The applicant's name was sent for

consideration for promotion to Group 'B' post in the DPC to be held, but did not find place in the promotion order issued by respondent no.2 vide orders dated 05.09.2006 and 12.12.2006 (Annexure A4 & A5) respectively. The respondents issued seniority list of Telecom Group 'B' Superintendent (M) on 01.05.2007 wherein it is clear that number of junior persons who were promoted on the post of TA after the applicant has been promoted Group 'B' Superintendent (M) (Annexure A6).

4. It is further stated that one Shri C.P. Singh filed OA No.476/2004 before Lucknow Bench of this Tribunal for promotion to the post of Group 'B' Superintendent (M), which was allowed, vide order dated 19.03.2009 (Annexure A7). The respondents issued combined seniority list of STA & TA vide letter dated 04.08.2009 (Annexure A8) wherein the name of applicant was placed at Sr.No.5 and the name of respondent no.4 was placed at Sr.No.20 and in between many juniors to the applicant who stood retired but given promotion on the post of Superintendent (M). It is also stated that the applicant filed OA No.185/2010 before this Tribunal for his grievances for non-grant of financial upgradation under the Scheme and denial of promotion vide order dated 10.03.2014 wherein a direction was given to the applicant to file a fresh representation to the respondent department within one month from the date of receipt of copy of this order, and the respondent department shall consider the same in the light of the relevant rules and regulation in force within three months from the date of receipt of such representation. If any grievance remains, after the decision of the representation, the applicant may approach this Tribunal by filing a fresh application (Annexure A11). Thereafter, applicant filed a representation dated 03.04.2014 through proper channel to the respondents stating therein that post of TA & STA were merged to form single cadre in the pay scale of Rs.5500-9000/- w.e.f. 01.01.1996. Hence the significance and effect of promotion to the post of STA stand washed,

moreover his promotion to the post of STA without any financial benefit is of no consequence and requested the respondents to examine the entire matter of promotion for Group 'B' Superintendent (M) after 01.01.1996 and order for review DPC (Annexure A12).

5. It is also further stated that without considering the factual and legal position respondent no.2 passed an order dated 08.08.2014 (Annexure A1) rejected the case of the applicant on the ground that Superintendent (M) are already working. Under restructuring two posts of Superintendent (M) are proposed hence DPC to carry out promotion from STA to Superintendent (M) is not being considered right now. Aggrieved of impugned order dated 08.08.2014 (Annexure A1), applicant has no other alternate except to approach this Tribunal for redressal of his grievance by filing the present OA. Hence this OA.

6. In the written statement filed on behalf of the respondents, the preliminary objection has been taken that the Telecommunication wing of the Directorate of Logistics created in 1974 to reinforce and strengthen the Custom anti-smuggling formation, wherein Group 'B' and Group 'C' posts comprised in three streams, namely Operation, Maintenance and Cipher. As Cipher stream has already been abolished completely, only two streams i.e. "Operation" stream and "Maintenance" stream are functional now. The applicant was initially appointed as Radio Technician (Telephone Wing) and he joined at Customs Sub-Commissionerate, Jodhpur under the Central Excise Commissionerate Jaipur-I on 08.12.1982. Thereafter, he was promoted to the post of Technical Assistant on 17.07.1987 and he was further promoted to the post of Senior Technical Assistant on 10.09.2003 in the pay scale of Rs.5500-9000/-. The Ministry's vide letter dated 18.02.2009 decided to merge the pay scales of Technical Assistant and Senior Technical Assistant in the pay scale of Rs.5500-9000/- with effect

from 01.01.1996. As far as promotion to the post of Superintendent (M) is concerned, Ministry has directed to follow instructions given by COS vide letter dated 25.08.2010, which allow filling up the posts in various cadres of the Wing, keeping under consideration the number of posts proposed in the restructuring. Two posts of Superintendent (M) are proposed in the proposal whereas as on date four Superintendent (M) are already working.

7. It is further stated that the Group 'C' cadre of Telecommunication is a Commissionerate based cadre. The Group 'B' cadre is All India based and there common seniority list is based on the promotion received in the feeder cadre. The name of the candidate mentioned in the Appendix 'A' attached with the letter dated 27.05.2005 is not in the seniority order. Appendix 'A' enclosed with this letter is a simple list prepared Commissionerate-wise for calling DPC documents. Hence the claim of the applicant is that the list is in order of seniority and as per this list, he was senior to Smt. L.G. Latha (name mentioned at Sr.No.17) is totally false and misleading. As per seniority list letter dated 18.04.2006 (Annexure R2) before the DPC was convened on 28.08.2006. It is seen from the said list, Smt. L.G. Latha was senior to the applicant. As per existing Recruitment rules notified in the year 2000 (Annexure R3), Sr. Technical Assistant is the feeder cadre for promotion to the post of Superintendent (M). As Smt. L.G. Latha became Sr. Technical Assistant before the applicant on 03.07.2003, hence she was kept above in the seniority order to the applicant. Shri N.K. Choudhary (one of the candidate granted promotion against General post) refused to accept the promotion, hence, Smt. Latha being next in the seniority order was promoted vide order dated 12.12.2006 (Annexure R5). The second candidate Shri Bhudke, accepted the promotion and joined his duties. Since there was no post against "General" category was vacant at that time, the applicant was not promoted.

8. It is also further stated that Smt. L.G. Latha was promoted to the post of Senior Technical Assistant on 03.07.2003 by her Commissionerate whereas Shri S.R. Choudhary was promoted to the post of Senior Technical Assistant on 10.09.2003 by his Commissionerate. Since Smt. L.G. Latha was promoted to the post of Senior Technical Assistant before Shri S.R. Choudhary, hence, the name was placed above Shri S.R. Choudhary in the seniority list circulated vide this DOL's letter dated 18.04.2006 (Annexure R2). Since, Smt. L.G. Latha, became STA earlier to Shri S.R. Choudhary and was placed above him in the seniority list prepared as on 01.04.2006, hence, accordingly she was promoted by the DPC to the post of Superintendent (Maintenance) in the year 2006 before Shri S.R. Choudhary. As per Madras High Court order, the Ministry issued letter dated 18.02.2009 for the post of Technical Assistant and Senior Technical Assistant under "Maintenance" stream are to be merged with effect from 01.01.1996. This Directorate on the basis of the Ministry's letter dated 18.02.2009 prepared a combined seniority list of TA and STA as on 10.02.2011 and circulated vide FNo.5/2-Sen/Comn-2011/235-249, dated 14.02.2011 (Annexure R18). The name of L.G. Latha does not exist in this list as she was already promoted to the post of Superintendent (M) on 12.12.2006. As per the seniority list for the post of Superintendent (M) indicates the names of Shri J.Y. Bhudke and Smt. Latha as both were senior to the applicant and were promoted to the post of Superintendent (M) on 05.09.2006 and 12.12.2006 respectively. Shri C.P. Singh, who never held the post of STA was promoted as Superintendent (M). The facts and circumstances of the case of Shri C.P. Singh was different and peculiar in nature. He was promoted as Superintendent (M) as per the directions of the Tribunal granting notional promotion to the post of Sr. Technical Assistant, hence, the case cannot be generalized.

9. It is further averred that the reply given vide letter dated 12.02.2010 (Annexure R10) is based on the factual date and details. The names mentioned in table of Para no.2 of the letter dated 12.02.2010 were senior to the applicant on the date of DPC held as the feeder cadre to fill up the post of Superintendent (M) is Sr. Technical Assistant as per existing Recruitment Rules and all candidates become Sr. Technical Assistant before the applicant. It is further stated that after 2009, no DPC has been convened to fill up the post of Superintendent (M) on the following reasons:

- a) All 11 posts of Superintendent (M) sanctioned to the Telecommunication Wing were already filled in the year 2009.
- b) In the year 2008, Staff Inspection Unit (SIU) functional under the Department of Expenditure, carried out a management study of the Telecommunication set-up under Central Board of Excise & Customs, and submitted their report. With regard to promotion till restructuring is not approved, COS vide their letter dated 25.08.2010 (Annexure R15) has conveyed that posts in any cadre of Telecommunication Wing would be filled keeping overall strength in line with number of posts proposed in the restructuring proposal.

In the cadre restructuring proposal (presently being examined by the Department of Expenditure), the number of posts in the grade of Superintendent (M) have been reduced due to the reason that work load has been reduced in the "Maintenance Stream" from past 15 years. Two posts of Superintendent (M) are proposed in the proposal whereas on date 04 Superintendent (M) are already working, hence, promotion cannot be carried out in the grade of Superintendent (M) at this stage. Therefore, the respondents prayed that the OA filed by the applicant may be dismissed with costs being devoid of merits.

10. Rejoinder has not been filed on behalf of the applicant in the present case.

11. Heard the learned counsels for the applicant and the respondents and perused the documents available on record.

12. Vide this OA the applicant seeks his promotion to the post of Superintendent (Maintenance) a Group 'B' post in the Commissioner, Customs and Central Excise with all consequential benefits. The applicant in support of his case drew our attention to the notification dated 18.01.2000 for promotion to the post of Superintendent Communication Maintenance. The method of recruitment prescribed that "Promotion shall be made on the basis of an all India eligibility list prepared with reference to date of completion of prescribed qualifying service, subject to maintenance of inter-se seniority by the officers in the respective grades of STA with 3 years regular service in the grade, failing which 6 years combined regular service in the grade of STA & TA. Whereas juniors who have completed qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying/eligibility service by more than half of such qualifying / eligibility service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying eligibility service."

13. During submissions, learned counsel for the applicant highlighted that despite the applicant's name being in the consideration zone for promotion to Group 'B' post in the DPC to be held he was not promoted. During final hearing, counsel for the applicant also drew our attention to the case of one Shri C.P. Singh, who was promoted to the post of Group

'B' Superintendent (M) although he was never promoted on the post of STA. This was in compliance of the order of the Tribunal to reconsider the case in view of the merger of cadre of TA and STA and to consider Shri C.P. Singh for promotion as Superintendent within a period of three months.

14. Applicant also drew our attention to the combined seniority list in respect of STA & TA (Annexure A8) wherein applicant's name appears at Sr.No.5 and that of Smt. L.G. Latha at Sr. No.20. As has been stated the post of TA & STA were merged to a form single cadre in the pay scale of Rs.5500-9000/- w.e.f. 01.01.1996 in the light of judgment of Hon'ble Madras High Court in WP No.12385/2004. Hence the significance and effect of promotion to the post of STA stand washed. However, in the consideration for promotion to the post of Group 'B' Superintendent (M), applicant did not find place (Annexure A3). Per contra, counsel for the respondents stated the name of the candidates in the letter dated 27.07.2005 is not in the seniority order but only a simple list prepared commissionerate wise by falling DPC document. Hence, the claim of the applicant that as per this list, he was senior being at Sr.No.5 to Smt. L.G. Latha, whose at Sr.No.17 is not appropriate.

15. The counsel for the respondents stated that the relevant list for consideration for promotion to Superintendent (M) was the seniority list dated 18.04.2006 (Annexure R2) in which Smt. L.G. Latha is senior to the applicant. As Smt. L.G. Latha became Sr. Technical Assistant before the applicant on 03.07.2003, hence she was kept above the applicant in the seniority order. In the DPC held on 20.08.2006 there were three vacancies out of the 3 available for filling up. Out of three vacancies two were unreserved and one was reserved for SC as per reservation roaster maintained by the Directorate. The DPC found Shri N.K. Choudhary and

Shri J.Y. Bhudke "FIT" against two General post and Shri G.K. Moyal was found "FIT" for filling up one reserved post earmarked for SC. Accordingly, order dated 05.09.2006 was issued (Annexure R4), names of Smt. Latha and the applicant were recommended by the DPC at 4th and 5th place respectively but as there were only 2 unreserved vacancies, no promotion order was issued in respect of these two officers. Shri N.K. Choudhary (one of the candidate granted promotion against General post) refused to accept the promotion, hence, Smt. Latha being next in the seniority order, was promoted vide order dated 12.12.2006 (Annexure R5). The second candidate Shri Bhudke accepted the promotion and joined his duties. Since, there was no post against "General" category was vacant at that time, the applicant was not promoted.

16. As regards the inter se seniority it has been clarified that the feeder cadre for promotion to the post of STA was TA prior to the merger of two posts of TA and STA. This promotion was commissionerate based and these seniority list was prepared independently by each Commissionerate and DPC to promote TA to the post of STA was conducted by the Commissionerate at their own level subject to availability of vacancy and fulfillment of Recruitment Rule conditions. Smt. L.G. Latha was promoted to the post of STA on 03.07.2003 by her Commissionerate whereas Shri S.R. Choudhary was promoted to the post of STA on 10.09.2003 by his Commissionerate.

17. It is clear therefore that Smt. L.G. Latha was promoted to the post of STA before Shri S.R. Choudhary, hence, the name was placed above Shri S.R. Choudhary in the seniority list circulated vide this DOL's letter dated 18.04.2006 (Annexure R2). Subsequently, as per Madras High Court order, the merger of TA & STA cadre w.e.f. 01.01.1996 was implemented and financial implications were granted by all Commissioner-

ate. The respondents counsel also submitted that as per the seniority list circulated on 01.05.2007 for the post of Superintendent t(M) the names of both Smt. Latha and Shri J.Y. Bhudke were both senior to the applicant and were therefore promoted to the post of Superintendent (M) on 05.09.2006 and 12.12.2006 respectively .

18. Learned counsel for the respondents also clarified that the case of Shri C.P. Singh who was promoted as Superintendent (M) was peculiar and not similar in nature as he was promoted as Superintendent (M) as per the direction of this Tribunal granting notional promotion to the post of STA.

19. Learned counsel also stated that the applicant had challenged only the restructuring w.e.f. 01.01.1996 and not the actual promotion benefits. Also on the representation made by the applicant a detailed speaking order had been issued which also was not challenged.

20. Learned counsel for the applicant states that applicant was not given similar treatment as other similarly situated persons and any violation of this would be violation of the Constitution. He cited the judgment of the Hon'ble Supreme Court in **Arvind Kumar Shrivastava & Ors. Vs. UP & Ors. (2015) 1 SCC 347.**

21. The case of the applicant is however not covered by the ambit of protection extended by the Hon'ble Supreme Court in the case of Arvind Kumar Shrivastava it is important to note that the Supreme Court have emphasized that all similarly situated persons should be treated similarly and should not be discriminated merely because they did not approach the Court earlier. But, it is clear that the case of C.P. Singh is different from the case of the Applicant.

22. Moreover, it is clear that the Applicant has not challenged the Draft seniority list circulated on 9th August 2009 which was a combined

Seniority list Of TA and STA issued by the Directorate of Logistics Customs and Central Excise (Annexure A/8) by which Representations were called for. Again Applicant did not challenge the Speaking Order given by the Respondent.

23. In the Seniority list issued on 01.05.2007 for the post of Superintendent (M) the names of both Smt. Latha and Shri J.Y. Bhudke were both senior to the applicant and were therefore promoted to the post of Superintendent (M) on 05.09.2006 and 12.12.2006 respectively.

24. In view of the Factual matrix as above the OA lacks merit; it is therefore dismissed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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