

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 427 OF 2017

Date of Decision:- 04th April, 2019.

***CORAM: R. VIJAYKUMAR, MEMBER (A).
RAVINDER KAUR, MEMBER (J).***

Manoj Jain

Aged 39 years, Working as Inspector (Preventive Officer),
Presently posted at Mumbai Customs Zone-1, NCH, Mumbai
and residing at Flat No.285, Block-29, Type-3 Quarters, CGS
colony, Ekta Vihar, CBD Belapur, Navi Mumbai 400614.

....Applicant

(Applicant in person)

Versus

1. Union of India

Through Revenue Secretary,
Ministry of Finance,
Department of Revenue
Central Board of Excise and Customs,
(CBEC), North Block,
New Delhi 110001.

2. The Chairman,

Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue, North Block,
New Delhi 110001.

3. The Chief Commissioner of Customs, Mumbai Zone-1,

New Customs House, Ballard Estate,
Mumbai 400001.

4. The Principal Commissioner of Customs (General)

New Customs House, Ballard Estate,
Mumbai 400001.

....Respondents

(Respondents by Advocate Shri. N.K. Rajpurohit)

ORDER (ORAL)

Per: R. Vijaykumar, Member (A)

I. This OA has been filed by the applicant on 30.06.2017 under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

"8(a) To direct the respondents to consider the applicant (mentioned at Sr. no.137 in the seniority list) for promotion to the post of superintendent of Customs (P) from the date his junior Shri. Shiv Narayan Meena (mentioned at sr. no.783 in the seniority list) got promotion for the vacancy year 2016-17 with all consequential benefits.

(b) To declare the action of respondents in not including the name of applicant in the eligibility list prepared for promotion to the post of Superintendent of Customs (P) from the date his juniors got promotion as illegal and unjustified and issue appropriate directions for promoting the applicant to the said post of Superintendent of Customs (P) with all consequential benefits including arrears of pay.

(c) To direct the respondents to consider the applicants for promotion as Superintendent of Customs (P) by relaxing two years of service as per DOP&T OM No.AB-14017/12/88-Estt.(RR) dated 25.03.1996 read with Full Bench decision of Principal Bench of this Tribunal in Ms. Garima Singh & Others Vs. Union of India & Others (OA No.3278/2010).

(d) To direct the respondents to extend benefits on the basis of parity of the law declared by Principal Bench of this Tribunal in its Order dated 12.05.2016 in the matter of Pankaj Nayan & Ors. Vs. Union of India & Ors. (OA No.3405/2014) wherein Respondents No. 1 & 2 were also respondents and also of order dated 29.11.2016 of the Hon'ble High Court of Delhi in the writ

Petition (Civil) No.11277/2016.

(e) Any other relief's as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case to meet the ends of justice.

(f) To allow the OA with costs."

2. The applicant commenced service with the respondents as Inspector (Preventive Officer) at Mumbai on 23.10.2009 and his next promotion, according to the Recruitment Rules, is to the level of Superintendent after completion of eight years of residency in the lower post. The applicant contends that he had completed seven and half years of service by 01.04.2017 which is the relevant date for the promotion orders issued to various persons including his junior who is placed at Sr. No.74 in the list of promotees who is also placed at Sr. No.195 in the seniority list published on 17.05.2017 in which the applicant is at Sr. No.137. The applicant claims that in terms of the DoP&T OM No.AB/14017/12/88-Estt(RR) dated 25.03.1996, the Recruitment Rules have been amended as follows:-

"Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who

have already completed such qualifying/eligibility service."

3. This OM had been issued by the DoP&T for implementing the orders of the Hon'ble Apex Court in R. Prabha Devi & Others Vs. Government of India, (1998) 2 SCC 233, and also takes into consideration the orders of the Full Bench of this Tribunal (Principal Bench) in Mrs. Garima Singh Vs. Union of India & Others in OA No. 3278/2010 decided on 09.05.2011. The applicant argues that two conditions are required, as in the identical cases that were decided by the various Courts and finally by the Hon'ble Apex Court and as incorporated as an amendment in the Recruitment Rules namely, that his juniors are to be promoted and he should have completed not less than two years less than the prescribed residency period. These conditions had been fully satisfied in his case and he should have been promoted along with his juniors in the year 2017-18 in impugned orders dated 23.06.2017 (Annexure A-1).

4. The learned counsel for respondents states that the applicant was actually promoted in the year 2018-19 which is a year later than the date of promotion which is being agitated by the applicant. The case of the applicant was verified with the respondents and he concedes the factual details but insists that the qualifying service of eight years prescribed in the

Recruitment Rules has not been completed not only by the applicant but also by several other persons who were recruited along with him. This is as contained in the reply filed by the respondents in the matter.


5. We have gone through the O.A. along with Annexures A-1 to A-3, MA No.30/2018 for early hearing along with Annexure A-4 and Rejoinder along with Annexure A-5 to A-8 and MA No.624/2018 filed by the applicant. We have also gone through the Reply filed by the Respondents and have also carefully examined the various documents annexed in the case.

6. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, rival contentions and rulings of Courts, the law and precedents in this regard.

7. The facts of the matter in relation to the applicant are quite identical to the issue settled by the various Courts including the Full Bench of this Tribunal and the Hon'ble Apex Court and which has been incorporated by way of an amendment in the Recruitment Rules by the DoP&T OM No.AB/14017/12/88-Estt(RR) dated 25.03.1996. In particular, the reference is made to the decision of the Tribunal upheld by the Hon'ble High Court in Pankaj Nayan & Others Vs. The Secretary Ministry of Finance & Others in OA No.3405/2014 decided on 12.05.2016. Therefore, the plea of the applicant that


he should be granted promotion and placed just above his immediate junior in the promotion list of the year 2017-18 conforms to the rules and settled law and needs to be conceded by the respondents. The respondents are therefore directed to amend the promotion orders in regard to the applicant in the above terms and to pass orders within six weeks of receipt of a certified copy of this order.

8. The OA is accordingly allowed. No orders as to cost.


(Ravinder Kaur)

Member (J)

srp


(R. Vijaykumar)

Member (A)

Jm
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