

OA.No.170/00582/2018/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00582/2018

DATED THIS THE 26<sup>TH</sup> DAY OF SEPTEMBER, 2019

**HON'BLE DR.K.B.SURESH, MEMBER (J)**

**HON'BLE SHRI C.V. SANKAR, MEMBER (A)**

Smt. K. Saraswathy Raman,  
W/o Sri R. Raman,  
Aged 61 years, retired as  
Administrative Officer,  
O/o the Assistant Commissioner of Central Excise,  
Commissionerate-II, Dasanapura Division,  
Bengaluru 560 027, residing at  
'Deepasree', No. 90, BCC Layout,  
Vijayanagara II Stage, (Near Athiguppe),  
Bengaluru 560 040  
(By Advocate Shri A.R. Holla)

..... Applicant

Vs.

1. Union of India,

By Secretary,

Ministry of Finance,

Department of Revenue,  
North Block,  
New Delhi 110 001

2. The Chairman,  
Central Board of Indirect Tax and Customs,  
Department of Revenue,  
North Block,  
New Delhi 110 001

3. The Director General (HRD),  
Central Board of Indirect Tax and Customs,  
409/8, Deep Shikha, Rajendra Place,  
New Delhi 110 008

4. The Principal Chief Commissioner of Central Tax,  
Bengaluru Zone,  
C.R. Building, Queen's Road,  
Bengaluru 560 001

....Respondents

(By Shri V.N. Holla, Counsel for Respondent No. 1 to 3)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter seems to be covered by our order in OA No.  
1698/2015 dated 21.06.2017 which we quote:

"O R D E R  
DR.K.B.SURESH, MEMBER (J):

*The applicant submits that he had maintained an excellent record of service and his service received wide appreciation from his superiors. There had been no adverse remarks whatsoever against the applicant.*

2. *He was eligible for promotion and appointment as Principal Commissioner of Income Tax against the Panel year 2013-14 and his name was submitted to higher authorities for their acknowledgement vide S.No.97 in the list, the highest authority under the Government had approved it and therefore the selection of the applicant to the post of Principal Commissioner of Income Tax has become final. Now it remains only for the Board to issue that order.*

3. *But vide Annexure A-10, the government had taken a view that vide O.M.No.22011/5/1986-Estt.(D) dated 10.04.1989 which provide as under para 6.4.4, "While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect in cases where the vacancies relate to earlier year(s) i.e. from the date of assumption of charge in the higher post".*

*"Para 17.10.the general principle is that promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later".*

4. *Therefore, they held that since the applicant after retirement are not available to assume charge of higher post, they could not be given promotions to the higher grade, however, they are required to be included in the zone of consideration, as per provisions contained in OM, dated 12.10.1998.*

5. *This is to say that if by any chance, there is a delay in processing the promotions. In **NarendraVs. Union of India** (1990) Supp. SCC 440 the Hon'ble Apex Court held that doctrine of legitimate expectation is applicable even for a non statutory policy or guidelines issued by the State and would be enforceable against the State. As the applicant was eligible to be considered in the list of promotes and as the Directive Principles of State policy regard the enhancement of career progression of any citizen has pointed which the State must take note of as a Government would appear wrong in its approach, especially since the highest decision making body of the Appointment Committee of the Cabinet had approved the promotion of the applicant. While the applicant may not be able to physically accept the charge to render justice to it, even the notional promotion will be of serious issue to a Government servant as his career progress is not the result of fortuitous entanglement, but continuous effort. Therefore, the applicant has a legitimate expectation of being promoted.*

6. *It is to be noted in this connection that delay in finalizing the issue was not of the applicant's fault. Assume the case of an applicant,*

who had applied for examination before he attained the maximum age limit. For no reasons from his side, even though he had passed the examination, he was denied employment on the basis that at that point of time, he had crossed the maximum age limit. It would be such a travesty of justice that it is not applicant's fault that the selection process got delayed and he retired before he would assume charge. But still no justice had come to his aid, as the applicant had already been approved as Principal Chief Commissioner of Income Tax, he became eligible for such promotion, as even the decision of the ACC is only acknowledgement and approval and therefore when the process of promotion started, the applicant was still in service. The letter dated 30.01.2015 issued by the Secretariat of the ACC specifically states that the ACC has approved the proposal to empanel a number of officers (including the applicant) for promotion to the post of Principal Commissioner of Income Tax "with effect from the date of assumption of charge". This is also in keeping with the DoP&T's OM dated 14.11.2014 which made it clear that while the names of the retired officers could be included in the panel "such retired officers would, however, have no right for actual promotion". The applicant retired as far back as 31.12.2013. Therefore in terms of the ACC's order (Annexure-A3) as well as DoP&T's OM (Annexure-A6) he may not have any right to be promoted even on a notional basis, asserts the respondents.

Therefore the question is What is the meaning of the word "**actual promotion**"? For which we may have to go to Annexure-A6 with No.22011/1/2014-Estt(D) of DoP&T Office Memorandum dated 14.11.2014. The subject of this is reiterated here.

"The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum No.22011/4/98-Estt(D) dated October 12, 1998 regarding consideration of retired employees who were within the zone of consideration in the relevant year(s) but are not actually in service when the DPC is being held. The said OM provides as follows:-

".....There is no specific bar in the aforesaid Office Memorandum dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing year-wise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also it would not be in order if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing year wise zone of consideration/panel and, consequently, their juniors are considered (in their places), who

would not have been in the zone of consideration if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant Year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s) may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and Training Office Memorandum No.22011/8/87-Estt.(D) dated April 9, 1996”.

2. Appointment Committee of Cabinet has observed that DPCs often do not consider such eligible officers who are retiring before the occurrence of the vacancy in the panel year. These undesirable trends negate the very purpose of the above said Office Memorandum No.22011/4/98-Estt(D) dated October 12, 1998 and it is also against the principle of natural justice.

3. All the Ministries/Departments are therefore advised to ensure strict compliance of the instructions of the Department of Personnel & Training issued vide this Department's OM No.22011/4/98-Estt(D) dated October 12, 1998.

4. These instructions may please be brought out to the notice of all concerned including attached and subordinate offices.”

*This is a special empanelment for including the retired employees also for promotion. It goes without saying that the retired employees are also to be considered for promotion. It is only for notional promotion on the view taken as early as 1996 that such benefit should not be withheld as for the fault of department, the concerned employee need not suffer. **Therefore, the word actual promotion for a retired official as stated would have only one meaning that they will not hold a promotional post but will enjoy the benefit of promotion notionally from a particular date.***

*Therefore what is this day to be? This is be read in connection with the DoP&T Memorandum of even No. dated 12.10.2998. It is seen that apparently the Appointment committee of Cabinet (ACC), the highest decision making body of the governance had approved the creation of a new cadre. On 23.05.2013 and 31.05.2013 orders were issued. **But since the ACC had already approved the empanelment of the applicant vide Annexure-A3 dated 31.01.2015 it cannot be said that the ACC was not aware that the applicant had actually retired. If the ACC decision is not to serve any purpose they should not have issued such an order. This is particularly so, as it is specifically mentioned that this decision is relating to the panel year of 2013 – 2014.***

*But unfortunately the CBDT seems to have sat on the issue whereby several deserving officers in the last leg of their career lost their normally due promotion which has more value than monetary benefit to all of them. It seems that a mere erroneous reading of the word actual promotion has resulted in all these. Since the **ACC decision is of 2015 and the DoP&T Memorandum clearly indicated retired persons also be considered for promotion, it cannot be presumed that this will be a decision in vacuum. The purpose of the decision of the highest ranked decision making authority is clear that such people has to be given some benefit and that is why they were empanelled, otherwise there was no need for ACC to take such decision and empanel the retired government servants. Therefore only the intention presumed on the part of the ACC is that since actual promotion has not taken place the notional benefits are to be given particularly in view of the fact that this matter had been in the Government for consideration for quite a long time.***

*Therefore, it does not mean that the view taken by the concerned authority is correct, they seems to have mis read the word actual promotion and assumption of charge wrongly, **particularly in view of the fact that by special empanelment and direction, the government had given consent to the department of one time exemption from existing recruitment rules. Therefore even if it is to be presumed that assumption of charge is must, but when government has allowed that this one time exemption there was no need for the concerned department to presume that assumption of charge is a must in this circumstances. In fact in FOOD CORPORATION OF INDIA WORKERS VS. FOOD CORPORATION OF INDIA** reported in 1990 SC 2178 the Hon'ble Apex Court had held that whenever the applicant's fundamental rights are impaired by rules or government order, the Court can interfere. Here in this case the applicant is legally eligible for being promoted, when the Government has categorically decided that empanelled officer of 2013-2014 have to be promoted, merely because of the delay in some pattern of governance this right cannot be defeated. This right of promotion is therefore indefeasible, right of the applicant and others like him it cannot be denied for the reason that CBDT had taken some time to issue the order. But the right of the applicant and others like him would arise on the earliest point on which the rights of a person unthine for him or her. The Hon'ble Apex Court in **UNION OF INDIA Vs. E.G.NAMBUDIRI** reported in 1991 SC 1216 had held upheld that there is a need to non arbitrariness by administrative authority even when relevant Statute does not lay down any such application. But in this case the necessary directions were issued by the DoP&T and the ACC has also empanelled the applicant fully knowing that he had retired by that time, there is no scope for holding that without*

*assumption of charge, there cannot be promotion as the government had specifically exempted it as a one time measure. Therefore there may be a mandate to concerned authority to look into the matter afresh and enable this all contrary orders are hereby quashed. They will grant promotion to the applicant on the basis of on and the decision of the ACC cabinet decision on 23.05.2013 when applicant was still in service and determining the date on which the applicant will have notionally assumed charge as Principal Commissioner of Income Tax and make available to him all the benefits which normally flows from such allocation within the next 2 months. OA therefore allowed. No costs."*

2. Apparently in a similar matter in the matter of one Shri Kanakarajan the department had challenged a similar order in the Hon'ble High Court of Kerala which was dismissed which we quote below:

*"IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT:*

*THE HONOURABLE MR.JUSTICE THOTTATHIL  
B.RADHAKRISHNAN*

*&*

*THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH  
MONDAY, THE 3RD DAY OF JUNE 2013/13TH JYAISHTA 1935*

*OP (CAT).No. 1801 of 2013 (Z)*

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AGAINST THE ORDER/JUDGMENT IN OA 996/2012 of  
CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH  
DATED 28-01-2013*

*PETITIONER(S):/RESPONDENTS*

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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY,  
DEPARTMENT OF REVENUE,  
NORTH BLOCK, NEW DELHI – 110 001.*

*2. CHAIRMAN, CENTRAL EXCISE BOARD OF  
EXCISE & CUSTOMS, NORTH BLOCK,  
NEW DELHI – 110 001.*

*3. CHIEF COMMISSIONER OF CENTRAL EXCISE  
& CUSTOMS, CENTRAL REVENUE BUILDING,*

*I.S.PRESS ROAD, COCHIN – 682 018.*

*4. COMMISSIONER OF CENTRAL EXCISE & CUSTOMS,  
CENTRAL REVENUE BUILDING,  
I.S.PRESS ROAD, COCHIN – 682 018.*

*BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA*

*RESPONDENT(S):/APPLICANT*

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*K.T.KANAKARAJAN,  
ADMINISTRATIVE OFFICER,  
SERVICE TAX DIVISION,  
CENTRAL EXCISE BHAVAN,  
KATHRIKADAVU, COCHIN – 682 017.*

*BY ADV. SRI.C.S.GOPALAKRISHNAN NAIR  
BY ADV. SMT.CHANDINI G.NAIR*

*THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 03-06-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:*

*THOTTATHIL B.RADHAKRISHNAN &  
BABU MATHEW P.JOSEPH, JJ.*

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*OP(CAT) No.1801 of 2013*

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*Dated this the 3 rd day of June, 2013.*

### *J U D G M E N T*

*Thottathil B.Radhakrishnan, J.*

*The Establishment challenges Ext.P4 order of the Central Administrative Tribunal issued in favour of an employee, who by the situation, which is clearly the making of the Establishment, had stagnated for 17 ½ years in the post of Administrative Officer and had to retire. Though he pointedly complained about non-issuance of promotion orders, the Establishment through its reply statement before the Tribunal admitted having held DPCs for the periods 2007-08, 2008-09 and 2009-10 for promotion to the post of Chief Accounts Officer and also pleaded that following those three DPCs, 34, 21 and 12 Administrative Officers were respectively selected for promotion as CAOs. There were 34 vacancies of the CAOs in the Central Excise wing during the year 2007-08. The applicant's name was at serial*



*No.34 in the general quota, while there were only 28 vacancies in the general quota. Carrying it over to the subsequent years of 2008-09 & 2009- 10, the Establishment pleaded before the Tribunal that since the applicant's name does not figure in the zone of consideration for the year 2009-10, he might have been selected for the year 2008-09, since he was then in the zone of consideration for that year, however, no promotion order was issued. This means that the admitted stand of the Establishment is that for all intents and purposes, the applicant would have been treated only as a person, who was found fit to be promoted as a CAO following the DPC for the year 2008-09. DPC for the next year was also held. The plea that no promotion order was issued is merely one which exposes the Establishment's failure in adhering to the model DPC calendar and also matters connected with promotion of personnel in a multi hierarchy institution. We are, therefore, in complete agreement with the views of the learned Tribunal that the applicant cannot be held high-and-dry and is entitled to be considered as one eligible for being promoted as he was included in the select list of 2008-09. We, therefore, find no jurisdictional error or legal infirmity in the impugned direction issued by the Tribunal. The original petition fails.*

*In the result, this original petition is dismissed in limine.”*

3. Apparently on a contempt application being filed this order was implemented.

4. Now, Shri V.N. Holla, learned counsel for the respondents, points out that there might be a distinction in this that even though DPC was delayed without any discernible reason the promotion can only be prospective. But then applicant seeks only a notional promotion so that she will not lose the benefit of such promotion if timely promotions are to be given based on the finding of the DPC itself. That we think is a very reasonable request. We, therefore, hold that since the applicant is seeking only a notional promotion from the actual date on which the vacancy became available and following the DPC which held her suitable that she would have been eligible then this

promotion must be granted to her from the earliest point which is available to her. We have not made any finding whether any actual benefit also should be made available. We will leave it to other situation because this is only what is canvassed in the OA.

5. The OA is allowed. Benefits to be extended within two months next.  
No order as to costs.

(C.V. SANKAR)  
MEMBER (A)

(DR.K.B.SURESH)  
MEMBER (J)

/ksk/

**Annexures referred to by the applicant in OA No. 170/00582/2018**

Annexure A1: Copy of the order dated 22.10.2002  
Annexure A2: Copy of the OM dated 23.01.2014  
Annexure A3: Copy of the applicant's representation dated 30.10.2014  
Annexure A4: Copy of the order dated 28.11.2014  
Annexure A5: Copy of the letter dated 18.09.2017  
Annexure A6: Copy of the letter dated 13.01.2015  
Annexure A7: Copy of the OM dated 08.09.1998  
Annexure A8: Copy of the applicant's representation dated 06.06.2016  
Annexure A9: Copy of the applicant's representation dated 24.06.2016  
Annexure A10: Copy of the order dated 30.06.2016  
Annexure A11: Copy of the minutes of DPC meeting dated 12.08.2016

Annexure A12: Copy of the order dated 30.08.2016

Annexure A13: Copy of the applicant's representation dated 31.07.2017

Annexure A14: Copy of the order dated 12.02.2014

**Annexures referred in reply statement**

Annexure R1: Copy of the DoPT notings dated 12.09.2017

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