

(2021) 04 CAT CK 0011

In the Central Administrative Tribunal

Case No : Original Application No. 1482 Of 2017

Kultar Singh Sandhu

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 05-04-2021

Acts Referred:

Citation : (2021) 04 CAT CK 0011

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Piyush Kumar, Avinash Kaur, H.K.Gangwani

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the service of the Customs and Central Excise Department in the year 1980. 10 years thereafter he was promoted to the post of Appraiser. From that post he was promoted as Assistant Commissioner on adhoc basis on 10.12.2002. He was issued a charge memo, dated 03.05.2006 proposing major penalty. The department extended the benefit of the senior time scale on completion of four years' service in the post of Assistant Commissioner. It is stated that in OA.873/2007, the Madras Bench of this Tribunal directed through order dated 31.08.2008 that the four years of service on adhoc basis also will hold good for this purpose. The applicant was issued another charge memo on 27.08.2008. Three days thereafter he retired from service on 31.08.2008.

2. The applicant contends that the DPC was held for upgradation to the post of Deputy Commissioner on adhoc basis on 19.06.2008 and though he acquired eligibility in that behalf, his case was not considered on the sole ground that he retired from service. He contends that the Bombay Bench of this Tribunal had exonerated him of the allegations in the charge memorandum dated 03.05.2006 and on its part, the Disciplinary Authority dropped the proceedings on

03.07.2013 and thereby, he became eligible. He contends that, once the charge memo ceased to exist, he was entitled to be extended the benefit of retrospective promotion on par with his juniors.

3. We heard Shri Piyush Kumar, learned counsel for the applicant and Shri Shri Avinash Kaur & Shri H.K.Gangwani, learned counsel for the respondents.

4. The post of Assistant Commissioner is a promotional post and it is not the case of the applicant that he was promoted to that post, on regular basis. Adhoc promotion was made in the year 2002. He was not immediately concerned with the extension of the benefit of higher pay scale on completion of four years in the post of Assistant Commissioner. The next promotion to the post of Deputy Commissioner there again on adhoc basis took place in June 2009. By that time, two factors existed. First is that the applicant stood retired from service on 31.08.2008 and second is that he was facing two sets of disciplinary proceedings. While in one he came out by virtue of an order passed by the Bombay Bench in OA.873/2007, the second is dropped by the department itself. The setting aside of the charge memo or the dropping of the charges subsequent to his retirement would have been of any help to the applicant, if only the promotions to the post of Deputy Commissioner was on regular basis and his case was kept in a sealed cover. What is more important is that he did not get eligibility to be considered for regular promotion to the post of Deputy Commissioner on account of the fact that he was still holding the post of Assistant Commissioner on adhoc and substantive basis.

5. The occasion to extend the benefit of retrospective promotion would arise if only ____

(a) The employee was otherwise eligible to be considered for promotion, but faced certain impediments.

(b) An employee, who is junior to him was promoted to the higher post, with effect from a date anterior to the retirement of the one, who faced impediments.

6. We need to reiterate here that the facility referred to above is available only in case of regular promotions. In this case, we find that

(i) the DPC itself is convened long after the applicant retired from service; and

(ii) the promotion to the post of Deputy Commissioner was only on adhoc basis.

7. The question of the applicant being extended the benefit of regular or adhoc promotion would not arise. We do not find any merit in this OA and the same is dismissed accordingly. There shall be no order as to costs.