

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.01.2017

Delivered on: 10.02.2017

Coram

The Honourable **Mr.Justice K.K.SASIDHARAN**

and

The Honourable **Mr.Justice V.PARTHIBAN**

W.P.Nos.31070 & 23172 of 2015
and M.P.No.1 of 2015

The Union of India,
rep. by its Under Secretary to Government
of India, Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
North Block, New Delhi-110 001. ..

Petitioner in
WP 31070/2015
&1st Respondent
in WP 23172/2015

G.V.Naik ..

Petitioner in
WP 23172/2015
& 1st Respondent
in WP 3107/2015

versus

The Registrar,
Central Administrative Tribunal,
Madras Bench,
Additional City Civil Court Building,
High Court Campus,
Chennai-600 104. ..

2nd Respondent
in both WPs.

Prayer in WP 3070 of 2015: This Writ Petition is filed under Article 227 of the Constitution of India, to call for the records connected with the order of the 2nd respondent passed in OA 803 of 2012 dated 16.02.2015, quash the same and consequently, direct the 1st respondent to promote the petitioner to the rank of Chief Commissioner with effect from 16.4.1997 on par with his Junior Sri M.K.Zuthni and granted him the benefit of Member (Technical) CEGAT with effect from November 2002 to July, 2004 with further direction to pay arrears of salary along with 18% interest per annum.

Prayer in WP 23172 of 2015: This Writ Petition is filed under Article 227 of the Constitution of India, to call for the records of the 2nd respondent Tribunal comprised in OA 803 of 2012 dated 16.02.2015 and quash the same.

Petitioner in
WP 31070/2015
& 1st Respondent : Mr.V.Sundareswaran SPC
in WP 23172/2015

Petitioner in
WP 23172/2015
& 1st Respondent : Mr.V.S.Paulraj
in WP 3107/2015

COMMON ORDER

V.PARTHIBAN, J.

Both the Writ Petitions arise against the order passed by the learned Central Administrative Tribunal (in short, 'the Tribunal') in O.A.No.803 of 2012 disposing of the application

filed by the applicant, G.V.Naik, who is the writ petitioner in WP 23172 of 2015.

2. For the sake of clarity, the petitioner in W.P.No.23172 of 2015 will be hereinafter referred as 'the applicant' while the Union of India, the petitioner in W.P.No.3070 of 2015 as 'the respondent'.

3. The facts which gave rise to the filing of the Original Application as well as the present Writ Petitions, are stated as under.

4. The applicant has approached the learned Tribunal, seeking the following relief:

"a) To promote the applicant to the rank of Chief Commissioner with effect from 16.4.1997 on par with his Junior Sri M.K.Zuthni;

b) To grant him the benefit of Member (Technical) CEGAT with effect from November, 2002 to July, 2004 and

c) To pay arrears of salary along with 18% interest per annum."

5. While the applicant was working as Assistant Commissioner of Central Excise, departmental proceedings were initiated against him in the year 1992, which culminated into a penalty of reduction of pay by three stages for a period of two years, by order dated 28.8.1998. Since the punishment was in force, the Departmental Promotion Committee which held for the panel year 1997-98, kept its recommendation in a sealed cover. Subsequently, the Departmental Promotion Committee held for the years 1997-98 and 1999-2000, did not recommend the applicant's name for promotion. Subsequently, another disciplinary proceedings were initiated in 1999 against the applicant, which ended with award of penalty of censure, by order dated 6.6.2002. There again, recommendations of the Departmental Promotion Committee held on 29.11.2000 and on 18.12.2001 for the panel years 2000-01 and 2001-02, kept in sealed cover, were not opened. Apart from the departmental proceedings, a criminal case was also initiated against the applicant. Therefore, even for the panel years 2001-02 and 2002-03, the name of the applicant was kept in a sealed cover and finally, the criminal case initiated against the applicant, ended in acquittal by order dated 26.3.2009 of the Criminal

Court. Thereafter, the applicant retired from service on attaining the age of superannuation on 31.07.2002.

6. The case of the applicant before the learned Tribunal was that the sealed cover ought to have been opened and consequently, he should be granted promotion with consequential benefits. According to the applicant, since the criminal case has ended in acquittal, the departmental action initiated and contemplated against him, ought to have been dropped automatically and that he was entitled to be considered for promotion as prayed for in 1997 itself.

7. Per contra, it was contended on behalf of the respondent that the claim of the applicant for promotion during the pendency of the departmental action and criminal proceedings, was untenable and such a prayer cannot be sustained in law.

8. After taking note of the submissions of the rival parties, the learned Tribunal disposed of the Original Application, with a direction as contained in para 8 of its order, which is extracted as under:

"8. The question to be considered in this case is whether the applicant would have become eligible for promotion based on the date of occurrence of the available vacancies in the panel years 2001-02 and 2002-03 based on the position of his seniority in the panel of names recommended by the said DPC. In the light of the fact that the applicant was acquitted by the Principal Sessions & Special Judge, Dharwad in the case filed by the CBI, the respondent is required to open the sealed cover and consider the case of the applicant in accordance with the recommendation of the DPC. Since the applicant had already retired from service, he could only be considered for notional promotion, if he was otherwise eligible based on his place in the seniority list in the panel for the year and if occurrence of the relevant vacancy was prior to the date of his retirement. In such event, the respondent is required to grant him the notional promotion. If the notional promotion is granted, the applicant's pay may be notionally fixed and the retirement benefits may be recalculated accordingly. The revised pension, will, however, become payable to the applicant on actual basis only from the date of filing of this OA. We do not see any merit in the claim of the applicant regarding his selection to the position of

Member, CEGAT at the distance of time. The respondent is directed to carry out the above exercise within a period of four months from the date of receipt of a copy of this order."

9. From the above, it could be seen that the learned Tribunal directed to grant notional promotion to the applicant if he is otherwise eligible, as Chief Commissioner of Customs and Central Excise. As regards the other prayer is concerned, namely, his further selection and appointment to the post of a Member of CEGAT, the learned Tribunal held that there was no merit in such claim of the applicant. Having aggrieved by the directions of the learned Tribunal, both the applicant and the respondent are before this Court by way of present respective writ petitions.

10. The learned counsel appearing for the applicant reiterated his contentions put forth before the Tribunal and the same is the case of the learned counsel appearing for the respondent.

11. As far as the contention raised by Shri V.S.Paul Raj, learned counsel for the applicant that in view of the acquittal in the criminal case, the entire disciplinary action initiated against the applicant deemed to have been lapsed, cannot be accepted as a tenable one on the basis of the settled legal position. Moreover, it is admitted position that the applicant has not challenged the initiation of disciplinary action against him at any point of time and even after acquittal in the criminal case. He has only approached the learned Tribunal seeking for a direction for appointment to the post of Chief Commissioner of Customs and Central Excise and further as a Member of CEGAT. In the absence of challenge to the disciplinary action, a mere acquittal in the criminal case, cannot be a ground for sustaining the claim of the applicant. Such a course would be contrary to the rule position and the law laid down on the subject matter. Learned counsel for the applicant also relied upon a decision reported in (2006) 5 SCC in the matter of **"G.M.Tank versus State of Gujarat and others"**. On going through the same, we are of the view that the said decision cannot be applied to the factual matrix of the present case.

12. Shri V.S.Paul Raj contended that the direction of the learned Tribunal that the applicant was entitled to revised pension only from the date of filing of the Original Application is not correct and fair, since he is entitled to get his pension refixed on being granted notional promotion in the year 2001-02 and 2002-03. We also do not see what is the reason for the Tribunal to restrict the payment of revised pension only from the date of filing of the Original Application, in view of the fact that payment of pension is a corollary to the notional promotion to be granted to the applicant after his acquittal in the criminal case.

13. As regards the contention of the respondent in the Writ Petition No.31070 of 2015 that the direction issued by the Tribunal ought to be interfered with, is also not acceptable for the simple reason that the Tribunal has followed the established principles laid down by the law on the subject matter and the same need not be interfered with and therefore, the Writ Petition in W.P.No.31070 of 2015 filed by the respondent, is hereby dismissed.

14. The other Writ Petition filed by the applicant in W.P. No.23172 of 2015 is partially allowed only to the extent that the revised pension is payable to the applicant including the arrears thereof from the date of his retirement in the event of the applicant was fit to be promoted for the panel years 2001-2002 2002-03. The order of the Tribunal is modified only to that extent and remaining portion of the order passed by the Tribunal suffers no infirmity. Therefore, the same is confirmed.

There shall be no order as to costs. Consequently, connected MP is closed.

suk

(K.K.S.,J.) (V.P.N.,J.)
-02-2017

Index: Yes/No
Internet: Yes/No

K.K.SASIDHARAN, J.
AND
V.PARTHIBAN, J.

Pre Delivery order in
W.P.Nos.31070 and
23172 of 2015

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