

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4745 OF 2005

Union of India & Ors.

...Petitioners

Versus

Mahadev Sakharam Kadam

...Respondent

Mr. Suresh Kumar with Mr. A. R. Verma and P. S. Gujar for
Petitioners.

Mr. S. V. Marne i/b. Mr. Vishal Shirke for Respondent.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 05 JULY 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgments and orders dated 11th March 2003, 8th February 2005 and 11th March 2005 made by the Central Administrative Tribunal (CAT) disposing of Original Application No. 522 of 2002 instituted by the respondent. The operative portion is transcribed in the order dated 11th March 2005, which reads as follows:

“Heard counsel for parties. As per majority view OA is allowed. Respondents are directed to include the name of the applicant in the panel as he has met the Benchmark and to give all consequential benefits in this respect with effect from the date the applicant's junior was promoted, within two months from the date of receipt of copy of this order. No order as to costs.”

3] This Court, by a detailed order dated 3rd August 2005 indicated the reasons as to why it was not inclined to grant any interim reliefs staying the operation of the impugned judgments and orders. The order dated 3rd August 2005, reads as follows :

“1. Rule. For the reasons that we briefly indicate, we decline to grant interim relief.

*2. The Central Administrative Tribunal has held that under the Recruitment Rules of 1979 as amended on 31st March 1992, there was no requirement of a comparative assessment of the records of the candidates and subject to the attainment of the bench mark of 'good' and passing through the interview, a candidate would have to be included in the panel for promotion to the extent of the number of vacancies to be arranged in order of interse seniority. Prima facie, we are of the view that the order of the Tribunal should not be stayed during the pendency of the proceedings. Firstly, it is common ground that the facts of the present case are similar to those in **Surekha M. Chari v. Commissioner of Customs & Central Excise** (O.A. 515/2001 decided on 19th December, 2003) reported in 2004(1) ATJ 333. The applicant there had sought a direction to convene a review DPC for considering her case for promotion*

as Inspector of Central Excise and to promote her to the post from the date her juniors were promoted. The Union of India filed an affidavit stating that a review DPC had been convened on 10th October, 2002 and the applicant was promoted to the post of Inspector with effect from 30th August, 2000. The decision in Surekha Chari's case has been accepted by the department. That apart, prima facie it appears from the Central Excise and Land Customs Department Group D Posts Recruitment Rules, 1979 that promotions to the post of Inspector (Central Excise) are to be made by selection. The Rules, however, do not stipulate as to how the process of selection is to be carried out. Note 2 appended to the Rules relating to the post of Inspector provides that eligible officers shall be required to pass through an interview before promotion. The Central Administrative Tribunal has held that there is no requirement of comparative assessment under the Rules and once a candidate had attained the prescribed bench mark, it was sufficient if he passed through the interview for inclusion in the panel for the promotion to the extent of the number of vacancies arranged in the order of interse seniority. We find prima facie that the view of the Tribunal is a possible view on the basis of the Rules and is consistent with the earlier view of the Tribunal in Surekha Chari's case which has been accepted by the department. In these circumstances, while we are of the view that the Petition should be considered for final hearing by the grant of rule, interim relief is not warranted in the facts and circumstances of the case. There shall accordingly be no interim relief during the pendency of the proceedings."

4] There is no dispute that the directions in the impugned order stands complied with and as a consequence, the respondent was not only promoted to the post of Commissioner of Central Excise but further, the respondent,

has retired on 28th August 2013 after attaining the age of superannuation. Though, the impugned judgments and orders had directed the petitioners to grant all consequential benefits to the respondent, till date, arrears w.e.f. 1999-2005 have not been paid to the respondent. Mr. S. V. Marne, on the basis of instructions from the respondent, who is present in the Court, makes a statement that the respondent is not interested in claiming such arrears or any further consequential benefits, in addition to whatever have already been availed by the respondent. This statement is accepted.

5] At this point of time, we do not deem it appropriate to interfere with or set aside the impugned judgments and orders, which as noted earlier, have already worked themselves out. In the first place, the order dated 3rd August 2005 has already indicated that the view taken by the MAT, is *prima facie*, a plausible view. Secondly, any interference with the impugned judgments and orders at this stage, will result in administrative chaos, because, this will involve in re-working the empanelments and re-deciding the issues of promotions which have, long since, been

settled. Thirdly, grant of any relief at this stage might involve recovery of benefits availed against the promotional post, which, now that the respondent has already retired, may not be appropriate.

6] For the aforesaid reasons, we dispose of the present petition by recording a statement of the respondent as aforesaid.

7] The Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA