IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

WP No.3625 of 2017

1.The Union of India
represented by the Chairman,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block,
New Delhi – 110 001.

2.The Member (P&V)
Central Boar of Excise and Customs,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi -110 001.

3.The Chief Commissioner of Central Excise,
Chennai Zone, No.26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

... Petitioners

versus

1.Vijayalakshmi

2.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Additional City Civil Court Complex,
Madras High Court Campus,
Chennai – 600 104. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari to call for the records of the second respondent in OA No.310/1025 of 2014 dated 28.07.2016 & Corrigendum dated 23.08.2016 and quash the same.

For the Petitioners :Mr.Umesh Rao K.
Senior Standing Counsel

For the Respondents :Mr.S.M.Loganathan
for Mr.Sriram for first respondent
second respondent -Tribunal

ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.)*

Challenging the order passed by the Tribunal in OA No.310/1025 of 2014, dated 28.07.2016, and the Corrigendum dated 23.08.2016, the petitioner has filed the present writ petition.

2. Brief facts of the case:

2.1. The first respondent joined the Central Excise Department as Lower Division Clerk (LDC) on 02.03.1972. Thereafter, she was promoted as UDC and then as Deputy Office Superintendent, Office Superintendent, and finally as Administrative Officer, on 15.07.1994. While she was working as Administrative Officer, she retired on 30.11.2011 on attaining the age of superannuation. The first respondent has filed an Original Application in OA No.1458 of 2011 before the Central Administrative Tribunal, seeking a direction to the respondents for promotion to the grade of Chief Accounts Officer. The Tribunal, by order dated 25.07.2012 had dismissed the said OA, holding that her rights were not affected inasmuch as none of the eligible officers were considered.

2.2. The first respondent again filed the instant original application in OA No.310/1025 of 2014, seeking a direction to the petitioner Department to convene a Review DPC of the DPC held on August 2007 for considering her candidature for promotion to the post of Chief Accounts Officer for the year 2006-2007 during which period, the first respondent became eligible and due for promotion and a direction to grant notional promotion to the grade of Chief Accounts Officer and to refix her pay and pension and grant consequential benefits. The Tribunal, by order dated 28.07.2016, had allowed the said OA and directed the petitioner Department to grant notional promotion to the first respondent to the post of Chief Accounts Officer w.e.f. 01.06.2009 and also to grant other consequential pensionary benefits. Aggrieved by the said order dated 28.07.2016, the petitioner Department has filed the present writ petition.

3. Learned Senior Standing Counsel for the petitioner Department submits that in the instant OA, the petitioner Department has filed reply statement and also other reports. The petitioner Department has stated in the said reply statement that the DPC was conducted on 07.11.1997, to the grade of Chief Accounts Officer, for the vacancy year 1996-1997 and 1997-1998. Thereafter, a proposal for promotion to the post of Chief Accounts Officer was under consideration during the year 1999-2002, and the same was discussed with UPSC for reconsideration. Since the process of making promotion through UPSC was time consuming and a protracted exercise and the cadre restructuring was also to be finalized by 31.12.2002, it was

decided to conduct DPC for adhoc promotion to Chief Accounts Officer with the approval of Finance Ministry. Accordingly, meeting of DPC took place on 09.06.2003 and the first respondent's name figured at Serial No.312 and only first 123 officers were promoted on adhoc basis and the first respondent could not be promoted for want of vacancies. Thereafter, DPC was held on 1st, 2nd and 3rd of August 2007 for grant of regular promotion to the cadre of CAO relating to the years 1998-1999 to 2006-2007 through UPSC and accordingly, 126 officers were promoted on regular basis. For the year 2006-2007, only 27 vacancies existed and the first respondent's name was included in the list of eligible officers. A total of 278 officers were considered in the DPC held on 1st, 2nd and 3rd of August 2007 and the first respondent's name figured as Serial No.255 but she was not recommended by that DPC. Subsequently, in order to fill up the vacancies in the post of CAO of the year 2007-2008, 2008-2009, 2009-2010, the process of holding DPC was initiated in 2008. In the meantime, UPSC had raised a number of queries which were replied to. Thereafter, DPC meeting was conducted on 22.06.2013 for promotion to the post of CAO which found the first respondent fit for promotion to the post of CAO against the vacancy for the year 2007-2008. Since the first respondent retired on 30.11.2011, she was not actually promoted. The circumstances under which the DPC could not be held in time was duly explained and this may not be the only case; there may be many of such cases where, due to certain administrative constraints, DPC could not be held in time.

4. Learned Senior Standing Counsel for the petitioner Department further submitted that though the first respondent's name was considered for promotion, since she had retired on 30.11.2011, she was not actually promoted. The Tribunal, without considering the said aspect, has allowed the said OA. Therefore, the order of the Tribunal is liable to be set aside.

5. Learned counsel for the first respondent has relied upon the Office Memorandums dated 12.10.1998, and 14.11.2014, issued by the Government of India.

The relevant portion of the Office Memorandum dated 12.10.1998 is extracted hereunder:

'3 The matter has been examined in

consultation with the Ministry of Law (Department of Legal Affairs. It may be pointed out in this regard that 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 years(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 place) 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 are 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."

The relevant portion of the Office Memorandum dated 14.11.2014 is extracted hereunder:

> *"3.All the Ministries/Department 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.*

6. Learned counsel for the first respondent further submits that the aforesaid Office Memorandums dated 12.10.1988 and 14.11.2014, clearly state that the first respondent is entitled for the notional promotion, since her name was also included and she was found fit for promotion to the post of CAO against the vacancy for the year 2007-2008, but she was not given actual promotion, since she has retired from service on 30.11.2011, on attaining the age of superannuation. Hence, he seeks for dismissal of the writ petition, confirming the order passed by the Tribunal.

7. Heard the parties and perused the materials available on record.

8. The aforesaid memorandums have not been placed before the

Tribunal. However, the first respondent herein has placed the said Memorandums before this Court. Thus, there was no occasion for the Tribunal to consider the said Office Memorandums.

9. In view of the aforesaid Memorandums dated 12.10.1988 and 14.11.2014, placed before this Court, we are are inclined to direct to the petitioner Department to consider the claim of the first respondent taking into consideration the aforesaid memorandums and to pass appropriate orders, as expeditiously as possible within a period of 12 weeks from the date of receipt of a copy of this order. It is needless to say that the first respondent shall also make appropriate representation to the petitioner Department within a period of two weeks from the date of receipt of a copy of this order.

10. With the above modification, the Writ Petition stands partly

allowed. There will be no costs. Consequently, WMP No.3661 of 2017 is closed.

[D.K.K., J.] **[P.D.B., J.]**
20.12.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn

D.KRISHNAKUMAR, J.
and

P. DHANABAL, J.

(mrn)

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