



मुंबई सीमाशुल्क अंचल - I

Mumbai Customs Zone - I

प्रधान आयुक्त सीमाशुल्क (सामान्य) का कार्यालय

Office of the Principal Commissioner of Customs (General)

नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई

New Custom House, Ballard Estate, Mumbai,

Maharashtra - 400 001

Telephone - 022-22757736 / 7422

E-mail: p.estt-mum-cus-zone1@gov.in

F. No. S/20-13/2023/P&E
F. No. II/(3)/APPT/91/2023-P&E

Date: 15-02-2024

ESTABLISHMENT OFFICE ORDER NO. 59 / 2024

Consequent upon the Hon'ble CAT, Mumbai Bench Order in OA No. 387/2023 dated 05.12.2023, the Sealed Cover kept in the Supplementary DPC meeting dated 27.02.2023 & 28.02.2023 in respect of Shri Kuldeep Singh (UR) was opened.

2. Accordingly, Shri Kuldeep Singh is hereby promoted to the grade of Appraiser in level 8 in 7th CPC pay matrix (pre-revised pay band Rs. 9300-34800 with grade pay of Rs. 4800/- of 6th CPC) on regular basis w.e.f. 08.03.2023.

3. The officer may exercise the option for fixation of pay in terms of FR-22(1)(a) (i) as per DoPT OM dated 27.07.2017 issued vide No. 13/02/2017-Estt(Pay-I) in the higher grade afresh within one month of issuance of this order. Such option once exercised shall be treated as final.

4. Any change in the inter-se seniority of Appraiser/seniority position of Shri Kuldeep Singh consequent upon issuance this order shall be reflected in the seniority list.

5. The officer is entitled to all the consequential benefits w.e.f. 08.03.2023 as per Hon'ble CAT, Mumbai Bench Order in OA No. 387/2023 dated 05.12.2023 .

6. The subject promotion being effected under this order is subject to the final outcome of the following CAT / Court Cases:

(a) Writ Petition No. 9921/2018 filed by Sanjay Mhatre & Ors before Hon'ble Bombay High Court challenging the order dt 31.10.2014 of Hon'ble CAT, Mumbai in O.A. No. 38 of 2011.

(b) O.A. No. 571 of 2014 filed by Shri Pradip Kumar and Ors. before Hon'ble CAT, Mumbai bench.

(c) O.A. No.650/2014 filed by All India Appraisers Association before Hon'ble CAT, Mumbai bench.

(d) O.A. No. 831/2019 filed by Shri Rahul Ahlawat & Shri Rahul Beniwal before CAT, Mumbai Bench.

I/1755400/2024

(e) Any other case pending before any court of law having any impact on the seniority and promotions in the grade of Appraiser.

(f) The promotions are subject to the further orders which may be passed by the Hon'ble Supreme Court as stipulated in DOPT's O.M. No. 36012/11/2016-Estt(Res-I) (Pt-II) dt 15.06.2018.

(g) Any review measures taken by this Department regarding seniority and promotion in pursuance of any decision in any Court/ Tribunal cases.

7. The officer offered regular promotion to the post of Appraiser would continue to work on in-situ basis till the issuance of his posting order.

This issues with the approval of the Competent Authority.

Dr. Kundan Yadav
ADDITIONAL COMMISSIONER
ADC/JC-II-O/o Pr
Commissioner-Customs-General-
Zone-I-Mumbai

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai – I, II & III.
2. All Pr. Commissioner/ Commissioner of Customs, Mumbai – I, II & III, Goa.
3. All Addl. /Jt. Commissioners of Customs, Mumbai – I, II & III, Goa.
4. The Liaison Officer for SC/ST/OBC/PH.
5. The Deputy Commissioner of Customs, EDI – for uploading on the website.
6. The CAO/PAO
7. CCR/IPR Section
8. Concerned Officers.
9. Notice Board.
10. Office copy.

Signed by Kundan Yadav
Date: 15-02-2024 15:37:58
Reason: Approved



प्रधानआयुक्त, सीमाशुल्क (सामान्य) कार्यालय
OFFICE OF THE PR. COMMISSIONER OF CUSTOMS (GENERAL)
केन्द्रीयप्रशासनिकअधिकरणकक्ष नवीन सीमाशुल्क भवन, बापू जमादार चौक,
CAT CELL, NEW CUSTOM HOUSE, BAPU JAMADAR CHOWK,
बलार्ड इस्टेट, मुंबई - ४००००१
BALLARD ESTATE, MUMBAI 400001
Email: mum.cus.catcell@gov.in

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Azadi Ka
Amrit Mahot

न्यायालयप्रकरण / अतितत्काल COURT MATTER/MOST URGENT

Date: .12.2023

To,

- I. The Asstt. Commissioner of Customs,
P&E Section, (Appraising Table)
NCH, Mumbai, Zone-I.
- II. The Asstt. Commissioner of Customs,
Vigilance Section,
NCH, Mumbai, Zone-I

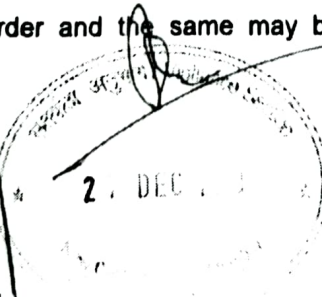
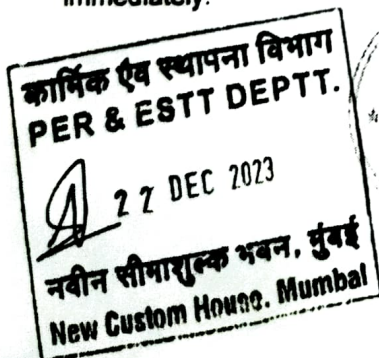
Sir/Madam,

Sub: OA NO. 387/2023 filed by Shri Kuldeep Singh (Examiner) V/s UOI & 03
Ors. before Hon'ble CAT, Mumbai Bench-reg.

Please refer to the above mentioned subject.

2. In this regard, the above said matter was listed before the Hon'ble CAT, Mumbai Bench, wherein, the Hon'ble CAT Mumbai Bench vide its order dtd. 05.12.2023 mentioned that *"the action of the respondents in adopting sealed cover procedure was proper. We therefore, deem it appropriate to set aside the Order dtd. 8th March, 2023 to the extent of applicant. Respondents are directed to open the sealed cover and promote the applicant if he is found fit for promotion. If he is promoted, he shall be entitled to all the consequential benefits with effect from 8th March, 2023 i.e. the date when the juniors of the applicant were promoted. Accordingly, the OA stands disposed of. Pending MAs, if any, stand closed. No Cost (copy enclosed)"*.

3. In this context, further necessary action at your end, may be taken, in the light of aforementioned CAT Order and the same may be intimated to this section, immediately.



Yours faithfully,

(Om Prakash Tiwary)

Deputy Commissioner of Customs
केन्द्रीय प्रशासनिक न्यायाधिकरण/CAT CELL,
मुंबई अंचल-I/Mumbai Customs Zone-I

Encl. as above.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

No.CAT/MUM/JUDL/OA/ 387/2023

Date

From,
The Registrar,
Central Administrative Tribunal,
Mumbai Bench,
Nishtha Bhavan, 6th Floor, 48,
Vithaldas Thackersey Marg,
New Marine Lines,
Mumbai - 400 020

10550
18/12/23

To,

1 Shri/Smt. R. G. Walia

(Advocate for the Applicant)

2 Shri/Smt. D. P. Dubi

(Advocate for the Respondents)

Subject:- OA No. 387/2023

Kuldeep Singh Applicant

Vs.

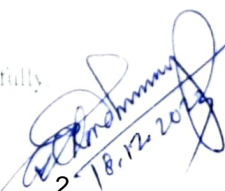
M/o Finance and ES CR Respondent

Sir,

I am directed to forward the accompanying of Judgment/Order dated 25/12/2023 issued by this Tribunal in the above matter.

Encl:- One Judgment & OA copy.

Yours faithfully,


25/12/2023

FOR REGISTRAR

Central Administrative Tribunal Mumbai Bench, Mumbai.

O.A. 387/2023.

Dated this Tuesday the 5th day of December, 2023.

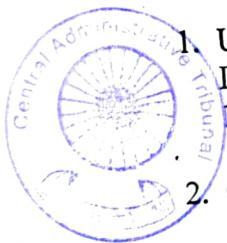
Coram : Hon'ble Shri Justice M.G. Sewlikar, Member (J)

Hon'ble Mr. Rajinder Kashyap, Member (A).

Kuldeep Singh (son of Harveer Singh) Date of birth: 19.03.1993 (age : 30 years 03 months)
working as: Examiner (Group "B" Post) in the office of Mumbai Customs, Zone-II and
residing at: M2,903, Valley Shilp CHS, Sector-36, Kharghar, Pin Code 410210, cell:
9326761529, email id: kuldeepdhilongmail.com. ...Applicant.

(By Advocate Mr. R G Walia)

Versus



1. Union of India, through: Revenue Secretary, Government of India,
Department of Revenue, Ministry of Finance, North Block, New Delhi-
110001.
2. Chairman, Central Board of Indirect Taxes & Customs, Government of
India, Department of Revenue, Ministry of Finance, North Block, New
Delhi- 110001.
3. Principal Chief Commissioner of Customs, Mumbai Customs Zone-I,
Ministry of Customs, Department of Revenue, New Customs House,
Mumbai 400001.
4. Principal Commissioner of Customs (General), Mumbai Customs Zone-I,
Ministry of Customs, Department of Revenue, New Customs House,
Mumbai 400001.

-Respondents.

(By Advocate Mr. D A Dube)

ORDER(ORAL)

Per : Hon'ble Shri. Justice M.G. Sewlikar, Member (J).

By this Application, the applicant is challenging "Sealed Cover" procedure and is also seeking promotion.

1. Facts in brief are that the applicant is working as Inspector (Examiner) in Customs Department. DPC for the post of Appraiser was conducted on 27th and 28th day of February, 2023. Promotion Order was issued on 8th March, 2023. However, the applicant was not promoted as his Order was kept under sealed cover. No intimation was given to the applicant as to why he was not promoted. When his juniors came to be promoted, on enquiry applicant learned that he was denied promotion. On 27th March, 2023, the applicant made representation against the adoption of sealed cover procedure. The said representation is not decided yet.

2. In the Affidavit, the respondents stated that while considering the suitability of the candidates for promotion, DPC observed that the show cause notice dated 20th July, 2022 was served upon the applicant in respect of live consignments using 03 IECs and past exports made by M/s Masafi exports, M/s Web International and M/s sterlite International to avail fraudulent duty drawbacks. In the reply, it is further stated that in the show cause notice, it was alleged that applicant actively connived with the Custom Broker personnel in the criminal conspiracy to defraud government exchequer and therefore, has been made noticee no. 8 to the said show cause notice which seeks to impose penalty under Section 114(i), 114(iii) and 114AA of the Customs Act, 1962. The DPC consciously decided that issuance of Show Cause Notice under Customs Act, 1962 should be treated at par with chargesheet described in Para 1 of the DoPT O.M. dated 2nd November, 2012. Therefore, the DPC placed the case of the applicant under sealed cover.

3. We have heard Mr. R.G. Walia, learned counsel for the applicant and Mr. D A Dube, learned counsel for the respondents.

4. Mr. R G Walia, learned counsel for the applicant submits that the said sealed cover procedure can be adopted only in three contingencies. Those contingencies don't exist in the present case. Therefore, the respondents ought not to have adopted sealed cover for the applicant.

5. Mr. D A Dube, learned counsel for the respondents raised objection about non-joinder of necessary parties. He submits that the applicant has not impleaded the candidates who are likely to be affected because of the promotion of the applicant. He further submits that the DPC considered the Show Cause Notice and decided to treat it at par with chargesheet and therefore, sealed cover procedure was correctly adopted.

6. We have given thoughtful considerations to the submissions made by counsel for the respective parties.

7. It is settled law that sealed cover procedure can be adopted only in following three contingencies:-

- i) When enquiry is pending against the applicant.
- ii) When chargesheet is pending against the employee in a criminal court.
- iii) When employee is under suspension.

8. In the case of *Union of India & Ors vs. Anil Kumar Sarkar*, (2013) 4 SCC 161, Supreme Court has held thus:-

"14. As per Para 2 of the said memorandum, at the time of consideration of the government servants for promotion, the following details of government servants in the consideration zone for promotion falling in the categories mentioned should be specifically brought to the notice of the DPC viz. (i) Government servant is under suspension; (ii) Government servant has been served with a charge-sheet and the disciplinary proceedings are pending; and (iii) Government servant is facing prosecution for a criminal charge and the said proceedings are pending. As rightly observed by the High Court, if the above conditions are

available, even one of them, then the DPC has to apply the "sealed cover process". In the case on hand, it is not in dispute that the relevant date is 21-4-2003, when the respondent's batchmates were promoted, admittedly on that date the respondent was not under suspension, no charge-sheet was served upon him nor was he facing any criminal prosecution. In such circumstances, In terms of para 2 referred to above, the recommendation of the DPC has to be honoured and there is no question of applying "sealed cover process".

9. In view of the above, it is axiomatic that none of these three circumstances exists in case of applicant for placing him under sealed cover. The argument of learned counsel that Show Cause Notice is treated at par with chargesheet is stated to be rejected. He has not pointed out any OM or any rule, guideline or decision of Supreme Court to this effect. Show Cause Notice by no stretch of imagination can be treated at par with chargesheet.

10. Learned counsel, Mr. R G Walia, at this stage submits that this Show Cause Notice has been dropped on giving reply by the applicant. Learned counsel, Mr. D A Dube is unable to confirm the submission of the applicant. If Show Cause Notice is dropped, then nothing remains against applicant. Even otherwise, sealed cover procedure cannot be adopted in contemplation of departmental enquiry.

11. In view of the above, we do not find that the action of the respondents in adopting sealed cover procedure was proper. We therefore, deem it appropriate to set aside the Order dated 8th March, 2023 to the extent of applicant. Respondents are directed to open the sealed cover and promote the applicant if he is found fit for promotion. If he is promoted, he shall be entitled to all the consequential benefits with effect from 8th March, 2023 i.e. the date when the juniors of the applicant were promoted. Accordingly, the OA stands disposed of. Pending MAs, if any, stand closed. No cost.

(Mr. Rajinder Kashyap)

Member (A)

/nk/

Certified True Copy

Date 18.12.2023

(Justice M.G. Sewlikar)

Member (J)

Central Administrative Tribunal
Mumbai Bench, Mumbai