

Central Adminisrative Tribunal
Principal Bench

(B)

O.A.No.3226/2002
with
C.P.No.6/2003 in O.A.No.324/2001

Hon'ble Shri Govindan S. Tampli, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 25th day of July, 2003

O.A.No.3226/2002:

Smt. Dropati Seth
w/o Shri S.K.Seth
r/o B-133, Kidwai Nagar (East)
New Delhi. Applicant

(By Advocate: Sh. S.K.Gupta)

Vs.

1. Union of India through
Secretary
Ministry of Finance
Department of Revenue
North Block
New Delhi.
2. Chairman
Central Board of Excise of Customs
Department of Revenue
Ministry of Finance
North Block
New Delhi.
3. Director
Director of Statistics & Intelligence
(Now Called as Directorate of Data Management)
D.L.F. Centre, Greater Kailash-II
New Delhi - 110 048.
4. Commissioner
Central Excise Delhi-I
C.R.Building, I.P.Estate
New Delhi - 110 002. Respondents

(By Advocate: Sh. M.M.Sudan)

with

C.P.No.6/2003 in OA No.324/2001:

Smt. Dropati Seth
w/o Shri S.K.Seth
r/o B-133, Kidwai Nagar (East)
New Delhi. Applicant

(By Advocate: Sh. S.K.Gupta)

Vs.

1. Sh. C.S.Rao
Secretary
Ministry of Finance

Department of Revenue
North Block
New Delhi.

14

2. Sh. M.K.Zutshi
Chairman
Central Board of Excise of Customs
Department of Revenue
Ministry of Finance
North Block
New Delhi.

3. Sh. Rajender Parkash
Commissioner
Central Excise Delhi-I
C.R.Building, I.P.Estate
New Delhi - 110 002. Respondents

(By Advocate: Sh. M.M. Sudan)

ORDER

By Shri Shanker Raju, M(J):

As the facts and issues are inter related and
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Woven, we proceed to dispose of the aforesaid OA and CP
through this common order.

2. Briefly stated that applicant was appointed as Junior Hindi Translator in the Directorate of Statistics & Intelligence (Central Excise & Customs) on 5.6.1976. Applicant is a disable having 60% disability in orthopaedic/ limb. In pursuance of a notification issued by Customs & Central Excise Collectorate on 9.8.1990 to fill up the post of Senior Hindi Translator in the Collectorate in Group 'C', applicant applied and by an Establishment Order No.76/91 issued on 5.3.1991, applicant was promoted as Senior Hindi Translator. Applicant was relieved from Directorate of Publication and was promoted as Senior Hindi Translator on 15.3.1991. Applicant fulfilled the eligibility criteria of three years regular service as Junior Hindi Translator.

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3. By an order dated 17.4.1995, applicant was ordered to be promoted as Assistant Director (Official Languages), on ad hoc and temporary basis and accordingly assumed the charge.

4. In the seniority list published on 16.4.1999, applicant had been shown to be working on ad hoc basis as Assistant Director (Official Languages).

5. By an order dated 24.1.2001, applicant was ordered to be reverted to the grade of Senior Hindi Translator. The above order was impugned before the Tribunal in OA No.324/2001 wherein the following directions have been issued:

"4. In this connection, Shri Anand states that a vacancy of Assistant Director (O.L.) already existed since 9.7.2001, and applicant being, in any case the seniormost in the feeder grade even otherwise is entitled to be considered for promotion against that post. This assertion is denied by Shri Gangwani, but even so, having regard to the fact that the respondents in their reply have stated that a post of Assistant Director (Official Language) has been identified for being filled up by a disabled person, which is yet to be notified, we dispose of the OA with a direction to the respondents to notify the aforesaid post within three months from the date of receipt of a copy of this order, and within that period make selection in accordance with the rules and instructions to the post so notified, and while doing so also consider applicant's claim for that post.

5. Meanwhile till the aforesaid directions are implemented, the interim order passed on 12.2.2001 restraining the respondents from implementing the impugned order shall continue."

6. Respondents, by an order dated 28.11.2002, which is assailed in the present OA, i.e., 3226/2002, invalidated and cancelled the promotion of the

applicant to the post of Senior Hindi Translator, whereas applicant was promoted 12 years back and was working as Assistant Director (Official Languages). As the above order has been assailed and by an interim order dated 11.12.2002, status-quo has been maintained by this Tribunal.

7. Shri S.K.Gupta, learned counsel for applicant, contends that the impugned action of respondents is with a view to circumvent the directions issued in OA 324/2001. After 12 years of promotion, the applicant has been reverted to the post of Junior Hindi Translator, whereas two promotions have already been given in the interregnum. According to Shri S.K.Gupta, not only 1976 Recruitment Rules for the post, but also 1988 Rules do not preclude the applicant being fully eligible on the date of DPC having more than five years regular service as Junior Hindi Translator to deny him promotion. It is also stated that applicant has accepted the promotions and altered her position by further promotion on ad hoc basis as Assistant Director (Official Languages), respondents are estopped on reverting her on equity and promissory estoppel. It is stated that 1988 Rules nowhere prescribes that the Hindi Translator should be borne on the strength of the Directorate. It is further stated that at this remote stage, the applicant shall be prejudiced by the action of the respondents.

8. In CP 6/2003 disobedience of the Court's order dated 13.2.2002 in OA 324/2001 is assailed. It is contended that in view of the Corrigendum issued on

18.2.1997 of DoPT's OM dated 16.1.1998, as well as DoPT's OM dated 19.2.1997, reservation to a physically handicapped in promotion irrespective of the Group or Grade, is permissible where the element of direct recruitment does not exceed 75%. Accordingly, it is contended that the stand taken by the respondents to deprive the applicant is a wilful and intentional disobedience of Court's order, which cannot be countenanced.

9. On the other hand, Shri M.M.Sudan, learned counsel for respondents vehemently opposed the contentions in OA and stated that the DPC held on 10.1.1991 whereby the applicant was promoted as Senior Hindi Translator was held in accordance with the Hindi Translator Recruitment Rules, 1979 over looking the amended Recruitment Rules of 1988. According to which applicant who belonging to Directorate of S & I, and was not borne on CCE, Delhi, was not eligible to be considered for promotion against vacancy of CCE, Delhi. It is thereafter, on the basis of representation by one Smt. Renu Venaik of CCE, review DPC through its findings dated 21.9.2000 invalidated the earlier promotion of the applicant which does not suffer from any legal infirmity.

10. In so far as CP No.6/2003, Shri M.M.Sudan stated that as per OM dated 18.2.1997 and 28.8.1998, reservation for physically handicapped, person is applicable only in identified Group 'A' and 'B' post under direct recruitment quota and is not applicable, in promotion, to the post in Group 'A' and 'B'. It is also stated that OM dated 16.1.1998

provides that wherever reservation in promotion is available it would be available subject to the conditions that element of direct recruitment if any would not exceed 75% and this provision does not extend reservation in Group 'A' and 'B' posts in promotion quota. Accordingly, it is stated that since the post of Assistant Director (Official Languages) are under direct recruitment quota in Group 'A' and 'B' have been sent to the UPSC for filling up, applicant has no right as per the rules and instructions and as the respondents have not flouted any directions of the Court, present action is not a contempt.

11. We have carefully considered the rival contentions of the parties and perused the material on record.

12. It is not disputed that applicant belongs to Directorate of S & I but had fulfilled the eligibility at the time when she was promoted in 1991 as Senior Hindi Translator. As per the Rules of 1979 ibid, for the concerned post, promotion was one of the mode of promotion was from amongst Junior Hindi Translator with three years regular service in the grade working in the Office or Department under CBEC.

13. On the other hand, as per amended Hindi Translators Recruitment Rules, 1988 for the post of Senior Hindi Translator in Column 11., the method of recruitment is by promotion, failing which by transfer on deputation and failing both by direct recruitment.

In Column 12 of the Rules ibid, promotion is to be

made amongst Junior Hindi Translators with 5 years regular service in the grade. If principle of grammatical interpretation is applied, and its literary meaning has not precluded specifically in express terms, Junior Hindi Translators having five years regular service are eligible to be considered for promotion. Though, it is stated by Shri M.M.Sudan that unlike 1979 Rules, Junior Hindi Translators from amongst those working in Office or Department under CBEC are not eligible to be considered for promotion, the rule being ambiguous, applying beneficial construction as the applicant had already worked on the post, after 12 years, it would not be equitable to disturb her promotion. The Apex Court in K.R.Mudgil v. R.P.Singh, 1986(4) SCC 531 held that a promotion cannot be disturbed after long lapse of time. Moreover, we also find that on promotion as Senior Hindi Translator, applicant is altered her position, by also being promoted as Assistant Director (Official Languages), it would not be fair and in the fitness of things for the respondents to review the earlier order to the disadvantage of the applicant and are estopped on equitable consideration.

14. In this view of the matter, once the Recruitment Rules of 1988, does not expressly exclude other Junior Hindi Translators from other officers of CEC to be considered and as the provision of Column 12 of the Rules is capable of two interpretations, the one which favours the employee on a benevolent construction, should be adopted, accordingly, the impugned order dated 28.11.2002 cannot be sustained in law.

20

15. In so far as the CP is concerned, the direction issued in the order dated 13.2.2002 in OA 324/2001 was on the statement of respondents as to identification of a post of Assistant Director (Official Languages), for being filled up ^w by a disabled person, which is yet to be notified. In this context, respondents have been directed to notify the post and make ^w selection in accordance with rules and instructions.

16. Respondents' stand that there is no question of reservation for disabled ^w in Group 'A' and 'B' post and accordingly, the matter has been sent to the UPSC is concerned, a contempt has only made when the respondents act ^w on negligence and carelessness but exclude bonafide acts and inability to comply with the directions of Court's order. The aforesaid is the ratio decidendi in Kapil Deo Prasad v. State of Bihar, 1999(7) SCC 569.

17. As the issue raised is contentious as to the applicability of reservation for physically handicapped in promotion to Group 'A' and 'B' post, we cannot enlarge the scope of contempt to go into the same. It may be that on their own interpretation of the instructions they have not regularised the applicant as Assistant Director (Official Languages) but the matter is disputed. However, we do not find any wilful or contumacious disobedience on the part of respondents, the issue can be raised by applicant in accordance with law.

18. In the result, we partly allow the OA and set-aside the impugned order dated 28.11.2002 and direct the respondents to treat the applicant as Senior Hindi Translator from the date of her original promotion. In so far as the claim of the applicant for promotion on reservation as disable to the post of Assistant Director (Official Languages) is concerned, we accord liberty to the applicant to pursue her remedy in accordance with law by filing the original proceedings within a period of two weeks from today. However, we direct the respondents, in the interest of justice, to maintain status-quo as of today with regard to the continuation of applicant as Assistant Director (Official Languages) till the end of two weeks from today. Accordingly, CP is dismissed and notices issued are discharged. No costs.

S. Raju
(Shanker Raju)
Member(J)

(Govindan S. Tampi)
Member(A)

/rao/