

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/01076/2019

DATED THIS THE 17th DAY OF JANUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Shri Narendra Deo Kumar
S/o Virendra Kumar Bindoo
Aged about 46 years
Working as Executive Assistant
Commissioner of Central Excise & Central Tax
Udupi Division, 1st Floor
Vishnu Priya Bhawan, LBS Marg
Ajjarkad
Udupi-576 101.

...Applicant

(By Advocate Shri.B.S.Venkatesh Kumar)

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.

2. Central Board of Excise & Customs (CBEC) & GST,
By its Chairman,
North Block
New Delhi-110 001.

3. The Principal Chief Commissioner of
Central Tax, Bangalore
P.B.No.5400,
Central Revenue Building,
Queens Road,
Bangalore-560 001.

...Respondents

(By Advocate Shri.Vishnu Bhat, Senior Panel Counsel)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he joined the department as Tax Assistant. The 2nd respondent issued a clarificatory letter on 2.8.2016 directing the various Cadre Controlling Authorities to give promotion on the basis of existing recruitment rules for the respective grades in respect of pre-cadre posts. Further two clarificatory orders were issued by the 2nd respondent on 23.2.2017 and 23.3.2017. Pursuant to which, the 3rd respondent granted promotion to the applicant as Senior Tax Assistant(STA)(redesignated as Executive Assistant(EA) w.e.f.1.4.2017. As of now the applicant has put in more than two years three months service in the promoted post. However, now the 2nd respondent issued a communication dtd.1.7.2019 withdrawing about 11 letters on the ground that those letters were passed without sanction of the competent authority and without following the procedure and issued directions to all the Cadre Controlling Authorities to conduct review DPCs by taking corrective action based on the relevant Recruitment Rules/DoP&T guidelines and also to submit compliance report of the instructions by the end of July 2019. The applicant submits that out of the 11 letters, only the letter dtd.23.2.2017 is withdrawn meaning thereby the other two communications dtd.2.8.2016 & 23.3.2017 are holding the field. By virtue of this communication, the applicant is being reverted to the post of Tax Assistant. Therefore, the applicant along with Karnataka Customs, Central Excise, Service Tax and LTU Ministerial Officers' Association has written a letter to the 3rd respondent on 5.7.2019 with a request to implement the directions from a prospective date and not to give effect to the same with retrospective effect and also to protect the interests of several persons working in the post of EA. But there is no reply as yet. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- a. *Call for records of the case from the respondents and on perusal,*

- b. *Issue a writ in the nature of certiorari or any other writ and quash and set aside the impugned letter bearing F.No.A.32018/37/2017-Ad.III.A dated 1.7.2019(Annexure-A1) issued by the second respondent as unjust, illegal, arbitrary and unsustainable.*
- c. *Issue a consequential direction to the respondents restraining them from taking any further proceeding pursuant to letter dated 1.7.2019 like holding any review DPC by virtue of impugned letter to revert anyone who has been promoted based on the Board's letters dated 2.8.2016 and 23.3.2017 which still hold the field.*
- d. *Grant such other order/s or relief/s as this Hon'ble Tribunal deems fit to grant to the applicant in the circumstances of the case including an order as to costs of this OA in the interests of justice and equity.*

2. The respondents have filed a memo stating that the reply filed in one OA.No.889/2019 is being adopted in this OA as the applicant in this OA has sought relief more or less on the same lines as that of OA.No.889/2019 challenging the letter dtd.1.7.2019.

3. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. We have earlier decided the similar matter in OA.No.889/2019 vide order dtd.13.12.2019. The relevant portion of the order is as follows:

"But then we hold that if the applicant had been assumingly promoted by a mistake then the consequential action should necessarily follow. But it does not mean that the efforts put in by the applicant in the promoted post should have been in vain. They will be eligible and entitled to retain the benefits they have received already that need not be refunded on any account. But other consequential action following appropriate action by the respondents will naturally follow. OA is held to be without any merit, dismissed. No order as to costs."

4. Going by the same analogy, the OA is also dismissed. No costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA No.1076/2019:

Annexure-A1: Copy of the impugned letter dated 1.7.2019
Annexure-A2: Copy of the Establishment Order dated 29.06.2017
Annexure-A3: Copy of the clarificatory letter dated 2.8.2016
Annexure-A4: Copy of the instruction for convening DPC by letter dated 23.2.2017
Annexure-A5: Copy of instructions dated 23.3.2017
Annexure-A6: Copy of the representation submitted by Association on 5.7.2019
Annexure-A7: Copy of letter dated 20.1.2017 of Chandigarh Zone
Annexure-A8: Copy of the judgment reported in (2013) 9 SCR 593

Annexures with reply statement:

Annexure R1: Copy of the letter dated 15.4.2015
Annexure R2: Copy of the Notification dated 28.9.2015
Annexure R3: Copy of the letter dated 17.9.2015
Annexure R4: Copy of the letter dated 27.08.2018
Annexure R5: Copy of the letter dated 23.2.2017.
