

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO.2205/2001  
M.A.No.1841/2001

New Delhi this the 28th day of November, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

1. Customs, Excise & Gold  
Control Appellate Tribunal,  
(CEGAT) Employees Assn.(NG) Regd.  
West Block 2, R.K.Puram  
New Delhi-110066  
Through its President  
Mr. D.S. Rawat.

2. Sakal Deo Sah  
S/o Shri N.K. Sah  
R/o R-III, A-54  
Mohan Garden,  
New Delhi-110018

....Applicants

( By Dr. D.C. Vohra, Advocate)

-versus-

- (1) Union of India  
Through The Secretary  
Ministry of Finance  
Department of Revenue,  
North Block, New Delhi
- (2) The Customs, Excise &  
Gold (Control) Appellate Tribunal (CEGAT)  
Through its Registrar,  
West Block 2, R.K.Puram  
New Delhi-110066.
- (3) Mr. Veer Singh  
Caretaker,  
(CEGAT) - West Block No.2,  
R.K.Puram  
New Delhi-110066
- (4) Ms. Seema Bhatnagar,  
UDC-Cash & Accounts  
CEGAT - (On deputation)  
West Block 2, R.K.Puram  
New Delhi-110066
- (5) The Principal  
Rajkumari Amrit Kaur  
College of Nursing,  
Lajpat Nagar,  
New Delhi-110024

(6) Director-General Border Roads  
Kashmir House  
New Delhi-110001 ..... Respondents

( Shri R.L.Dhawan, proxy for Shri  
N.S.Mehta, Advocate for respondent 1 and 5)

Shri Madhav Panikar, proxy for Shri C. Hari  
Shankar, Advocate for respondent no.2)

None for respondents 3 and 4.)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

MA No.1841/2001

MA No.1841/2001 for joining together in OA  
No.2205/2001 is allowed.

OA No.2205/2001

The applicants by virtue of the present application seek setting aside of the order of 9.3.2000 by virtue of which respondent No.3 (Shri Veer Singh) who is an employee of the Directorate General of Border Roads has been brought on deputation to the post of Upper Division Clerk and then promoted to the isolated post of Caretaker in the pay scale of Rs.5000 - 8000/- ignoring the claim of the Lower Division Clerks/Upper Division Clerks) in the cadre. They further seek a direction that respondent No.2 should send back respondent No.4 who is outside the cadre in the grade of Lower Division Clerk and is in fact an employee of the Rajkumari Amrit Kaur College of

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Nursing (respondent No.5).

2. During the course of submissions, it had been pointed that so far as respondent No.4 is concerned, the orders had been passed asking her to go back and, therefore, qua the said relief, the present application has become infructuous.

3. The relevant facts with respect to the remaining controversy are that the Customs Excise and Gold (Control) Appellate Tribunal (for short, "the CEGAT") has a number of Group 'C' and Group 'D' posts. The same is governed by the statutory rules known as Customs Excise and Gold (Control) Appellate Tribunal (Group- C and Group-D) Recruitment Rules of 1986. There is one post of Caretaker and the Recruitment Rules particularly column 12 provides:-

"Column 12:

Transfer on deputation/transfer

1. (i) Officers of the Central Government holding analogous posts;  
or
- (ii) holding the posts of Upper Division Clerks with 5 years' service in the grade; or
- (iii) holding the posts of Lower Division Clerks with 10 years' service in the grade..."

On 19.1.1987, the said Recruitment Rules were amended with respect to the post of Caretaker. By

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virtue of the amendment, column 12 (iii) now reads:-

"(iii) against Sl No.3 relating to the post of Caretaker, in column 12, for the words "transfer on deputation/transfer", words "transfer on deputation shall be substituted..."

4. It is asserted that respondent No.2 had not followed the statutory rules on the subject and it has affected the cadre personnel because of the induction of outsiders into regular grades. The recommendations of the Fifth Central Pay Commission had been accepted and in furtherance thereto instructions were issued on 25.5.1998 that the method of recruitment of 'transfer' indicated in the rules should be substituted to read as 'absorption' instead of 'transfer'. The Government of India in the Ministry of Finance even said to have issued instructions dated 30.6.1999 regarding rationalisation and norms in which a specific reference has been made to the post of Caretaker which reads:-

"(c) In establishments which continue to retain separate posts of Caretakers, these posts shall be merged in the general ministerial cadres in the corresponding scales of pay. In other words, there will be no separate cadre of Caretakers anywhere in the Government.

(d) Where no persons from the cadre is willing to serve as Caretaker, the post may be allowed to be filled up on loan basis instead of deputation basis from other cadres...."

It is asserted that respondent No.3 had been taken

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on deputation and joined as Upper Division Clerk in the office of the respondents and thereafter he had been inducted as Caretaker on deputation basis. The action as referred to above has been challenged contending that it ignores the members of the association and outsider had been called on deputation and given undue promotion which gives him exorbitant increase in the salary. Hence the present application.

5. In the reply filed, the application has been contested. It has been pointed, as referred to above, that qua respondent No.4, the prayer does not survive because she herself had withdrawn her request for absorption in the office of respondent No.2. As regards respondents No.3, it has been pleaded that he was brought as Upper Division Clerk on deputation basis. At that time applicant No.2 was already a Upper Division Clerk in the office of respondent No.2. He, therefore, cannot have any grievance in this regard. As per the recruitment rules, a Upper Division Clerk is eligible to be promoted as Head Clerk and not as a Caretaker. The post of Caretaker is an independent post governed by separate recruitment rules. The applicant No.2 was not eligible to be appointed as a Caretaker on deputation basis and, therefore, he lacks the locus standi to assail the appointment of respondent No.3. It is denied that the act of the respondents

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as such is invalid.

6. During the course of submissions, it transpires that Shri D.S.Rawat, President of the Customs Excise and Gold (Control) Appellate Tribunal Employees Association had earlier filed a Writ Petition No.1323 of 2001. The Delhi High Court on 27.2.2001 had dismissed the same and the following order was passed:-

"After arguing for a while, L/C for petitioner prayed for withdrawal of this petition with a liberty to file a fresh petition, if so advised.

Dismissed as withdrawn."

A perusal of the same clearly shows that though a prayer was made for withdrawal of the writ petition with liberty to file a fresh petition but still permission as such had not been granted and the writ petition had been dismissed. It was not disputed before us that the relief claimed in the present application is almost identical as was claimed in the civil writ petition. Once permission had been <sup>not granted</sup> refused by the Delhi High Court, it becomes unnecessary for us to consider the same because once the matter was under consideration before the Delhi High Court, the second petition on the same controversy indeed would not be maintainable. The applicant No.2 even

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was being represented in a representative capacity by the association.

7. Be that as it may, even if the matter is looked into again, the net result would be the same. The applicants' main grievance is that their chances of promotion are being marred by selection of respondent No.3. We have already referred to above, the relevant part of the recruitment rules. The order of appointment of respondent No.3 as a Caretaker reads:-

"Shri Veer Singh, formerly working as LDC in Dte. General of Border Roads and presently on deputation in CEGAT as UDC is appointed as Care-Taker on deputation basis in this Tribunal, in pay scale of Rs.5000-150-8000/- w.e.f. 3.3.2002 (FN)

The pay, terms and condition of deputation of Sh.Veer Singh will be governed by the instructions contained in the D.O.P.T.O.M.No.2/29/91-Estt. (Pay-II) dated 5.1.94.

The period of deputation of Sh.Veer Singh will be for three years including the period of deputation in the post of UDC. However, he is liable to be reverted to his parent office before expiry of three years, if any administrative exigencies so warrant."

It clearly reveals that respondent No.3 had been appointed on deputation basis. The applicants only had a right for being considered to a post but they had no right to be appointed unless there are any other cogent facts to prompt us to say otherwise. It is not their claim that they had not been

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considered. The grievance as referred to above is that their chances of promotion are being marred. That indeed will not cut much for the simple reason that the matter is governed by the recruitment rules and once the same are being followed, the abovesaid plea does not have legs to stand.

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8. The recruitment rules which have been reproduced above clearly show that for the post of Caretaker, a person can be considered on transfer on deputation. Respondent No.3 had been appointed on deputation and in this process, it is clear that the recruitment rules are being followed in letter and spirit.

9. So far as the instructions of the Government of India which we have taken liberty to mention above are concerned, they would only hold good if they are supplementary to the recruitment rules. If the recruitment rules are being followed, the departmental instructions will not override the statutory provisions. Recruitment Rules have been notified and framed under Article 309 of the Constitution and have statutory force. Administrative instructions in that light as referred to above cannot outweigh the same.

10. No other plea was raised.

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11. For these reasons, the application being without merit must fail and is dismissed.

Announced.



(V.K. Majotra)  
Member (A)



(V.S. Aggarwal)  
Chairman

/sns/