

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 32/2001

New Delhi, this the 14th day of January, 2002

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

Shri Sube Singh
S/o Late Shri Shish Ram
R/o Sector-I
House No.37, R.K.Puram
New Delhi - 110 022.

...Applicants

(By Advocate Shri P.T.S. Murthy)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary to the Govt. of India
Ministry of Finance
Deptt. of Revenue
New Delhi.
2. The Directorate of
Preventive Operations,
Customs and Central Excise
4th floor, Lok Nayak Bhawan
Khan Market, New Delhi.
3. Central Board Excise & Customs
thorugh its Chairman
North Block, New Delhi.

...Respondents

(By Advocate Shri R.R. Bharti)

O R D E R

By Hon'ble Shri Govindan S. Tampi,

The reliefs sought for in this OA are as below :-

a) to direct the respondents to regularize the applicant as Superintendent (Ops) w.e.f. 20-2-1992 instead of from 29-2-2000 in view of the fact that he has been continuing interruptedly as Superintendent (Ops) from that date i.e. 20-2-1992 with seniority from that date.

(b) to allow this application with costs.

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2. Heard S/Shri P.T.S.Murthy and R.R.Bharti, learned counsel for the applicant and the respondents respectively.

3. Facts as brought out in this OA are that the applicant who joined as Telex Operator on 22-4-1977 in Collectorate of Customs & Central Excise, Jaipur, became a Supervisor on 23-5-1981 in Surat and came over to Directorate of Preventive Operation on 13-2-1986, where he was promoted as Communication Asstt. on 12-1-1989. Following the restructuring of the telecommunication set up under the Central Board of Excise and Customs, notified under letter No.A-11013/105/84-Ad.iv dated 15-4-1991, 2 posts of Dy. Directors in Group 'A' and 55 Group 'B' posts were created, while abolishing 27 Group 'A' and 75 Group 'C' posts. Orders for implementation of the above were issued by the Director of Preventive Operation's letter F.No.202/2/92-DPO dated 20-2-1992. The applicant among those promoted against one of the newly created 55 posts of Superintendents (Operations) Group 'B' on 20-2-1992, on ad-hoc basis. The above promotion was ordered on ad-hoc basis in the absence of Recruitment Rules, but in terms of the DOPT's instructions on ad-hoc promotions. In spite of the above, the respondents by the order dated 29-2-2000, promoted the applicant as Superintendent (Operations) on regular basis, with probation for two years from the date he was to assume charge. At the same time, the two Dy. Directors, who were promoted against the post created by same sanction order were given

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promotion w.e.f. 15-4-1991, thereby discriminating the junior staff while according benefit to the Group 'A' officers. Hence this OA.

4. Grounds raised by the applicant are as below :-

(a) when Recruitment Rules are not present, the criterion for fixing the seniority is the date of appointment and continuous officiation and not date of confirmation.

(b) number of judgements starting from Narendra Chadha Vs. UOI & Ors. (AIR 1986 SC 638) to T.Vijayan and Ors. Vs. Divisional Rly. Manager & Ors. (2000 SCC (L&S) 444).

(c) ad-hoc service rendered before the Recruitments were drafted, but followed by regular appointment will count for seniority and promotion as laid down by the Hon'ble Supreme Court in Direct Recruitment Class II Engineering Officers Association & Ors. Vs. State of Maharashtra (AIR 1990 SC 1607)

(d) regularising Group 'A' Officers from the date of sanctioning the post but regularising Group 'B' officers only from a later date was discriminatory.

(e) ad-hoc service of eight years service should count for seniority and the applicant should not be made to suffer for Department's delay in finalising the Recruitment Rules for years.

The above was forcefully reiterated by Shri Murthi, learned counsel for the applicant.

5. Contesting the pleas raised by the applicant and arguing for the respondents Shri R.R.Bharti, learned counsel justifies the action of the Deptt. Respondents do not deny the facts as brought out in the OA but only rebut his inferences. According to them, when the posts were sanctioned, promotions against them have been ordered only on ad-hoc basis as the Recruitment Rules were not framed. The same was done in terms of the Deptt. letter F.No.202/2/92/DPO-Estt. dated 20-2-92. Recruitment Rules were framed on 18-1-2000. Regular promotions of the applicant was, therefore, correctly ordered under impugned order dated 29-2-2000 with two years' probation. The same cannot in any way be considered as improper. Shri Bharti also states that granting regularisation to the applicant from the date of his initial and ad-hoc promotion is likely to hurt the interests of the seniors, if any, in some Collectorates, where ad-hoc promotions have not been ordered on time. The applicant who has already enjoyed the benefit of ad-hoc promotion for quite some time cannot be permitted to make others similarly placed suffer. The OA, therefore, deserves to be rejected, pleads Shri Bharti.

6. We have carefully considered the matter and examined the facts and circumstances brought on record. The prayer by the applicant is that he be regularised as Supdt. (Operations) from 20-2-1992,

when he was promoted on ad-hoc basis. Respondents, on the other hand, aver that the promotions could be made regularly only on 29-2-2000 after the Recruitment Rules were framed on 18-1-2000. After considering the issue, we are convinced that the applicant has a case. When the posts were created as a part of the re-structuring process, in 1991, it was incumbent on the respondents to formulate relevant Recruitment Rules. They have not chosen to do it. Instead they have directed the implementation of the above by the order dated 20-2-1992, by all the filed formations. In the circumstances, the respondents' delay in formulating the Recruitment Rules, for a period of nearly eight days, cannot be permitted to come in the way of the applicant. In view of the decisions of the Hon'ble Apex Court from Direct Recruit Class II Engineers Assn. & Ors Vs. State of Maharashtra (AIR 1990 SC 1607) to those of T.Vijayan & Ors. Vs. Divisional Railway Manager & Ors. (2000 SCC (L&S) 444) and Rudra Pratap Sain & Ors. Vs. UOI & Ors. (2000 SCC (L&S) 1055), it is settled that those who have been promoted even if on ad-hoc basis, but after proper procedure and consultation and have held the post continuously for long, would be entitled for the benefit of officiating and ad-hoc service, included for purposes of seniority and even further promotion. The applicant's case is squarely covered by these decisions. Further, the seniority list indicated by the respondents as Annexure R-IV and the impugned order make it clear that the applicant's regularisation from his original appointment as Superintendent (Operations) would not hurt anyone else, who did not get any promotions earlier as he is

No.2 in the seniority list and the only person above him had also got promotion earlier and his regularisation would not hurt the applicant. This plea raised by the respondents also has no basis at all. The OA, therefore, has to be allowed and the benefit sought for has to be granted in the interest of justice.

7. In the above view of the matter, the OA succeeds and is accordingly allowed. Impugned order F.No.3/CCE/Comns/Gp.B/2000 dated 29-2-2000 is quashed and set aside, as far as it concerns the applicant Shri Sube Singh. Respondents are directed to treat the applicant as having been promoted as Supdt. (Operations) Group 'B' w.e.f. 20-2-1992, from the date of his ad-hoc promotion, with consequential benefits like seniority from that date for the purposes of promotion, when it falls due. He would not be entitled for any additional monetary benefits, as he has been drawing the relevant scale of pay from the date of his ad-hoc promotion. No costs.

S. Raju

(SHANKER RAJU)
JUDICIAL MEMBER

(GOVINDAN S. TAMPI)
ADMINISTRATIVE MEMBER

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