

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

NEW DELHI.

Dated: November 16th, 1998.

O.A. 216/1998

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J).

Mr. Vinod Nanda,

S/o Shri P.P.K. Nanda,
R/o C-91, Nirman Vihar,
Delhi - 092

.... Applicant.

(By Advocate: Dr. Surat Singh)

Versus

1. The Secretary,
Ministry of Finance,
North Block,
New Delhi.
 2. The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi.
 3. The Chief Commissioner,
Customs & Central Excise Delhi,
C.R. Building,
I.P. Estate,
New Delhi.
 4. The Commissioner-I,
Central Excise Commissionerate,
C.R. Building,
I.P. Estate,
New Delhi.
 5. Addl. Commissioner, (P & V),
Central Excise & Customs,
C.R. Building,
I.P. Estate,
New Delhi.
 6. Assistant Commissioner,
Central Excise-MOD IV,
G.-80, Preet Vihar,
Delhi-92
- Respondents.

(By Advocate: Shri R. R. Bharti)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A):

Applicant impugns respondents' orders dated 19.1.98 (annexure-A1) reverting him from the post of Inspector to that of Draftsman.



2. Applicant joined respondent department as a Draftsman on 20.7.76. He was promoted as Inspector against promotion quota, vide order dated 22.8.85 (Annexure-A2), by which he was required to pass the prescribed departmental exam. within the prescribed period, failing which he was liable for reversion. Respondents in their reply have pointed out that as per rules promotee officers are required to pass the departmental exam. within two years of their appointment, or within the first two year chances occurring after their appointment whichever is later, and this has been further restricted to 3 chances vide letter dated 17.2.92 (Annexure-R2), but the Commissioner may allow one additional chance, and the DGICCE can grant further chance on the recommendation of the Commissioner/HOD.

3. The departmental exam. comprises a written test and viva voce test. Applicant appeared in the departmental exam. in February, 1986 and while he cleared the written test, he failed in the viva voce test. Respondents state he was to appear in the viva voce test next in December, 1986 but he did not clear that. The viva voce test was held next in June, 1987 which was applicant's third chance but respondents state he remained absent from that test. Respondents did not take any steps to revert applicant immediately thereafter, and in fact he was allowed to continue as Inspector. In December, 1987 he was transferred from Jaipur

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to Delhi Collectorate. In October, 1987 he represented to the authorities that he had not been paid his annual increments for the last 10 years, and threatened to immolate himself, upon which respondents called for his service records and released his increment arrears. Respondents contend that these records disclosed that he had not passed the viva voce test either in Jaipur or in Delhi. Respondents aver that applicant wilfully suppressed the fact that he had not passed the required departmental exam. and misled the department to believe his version using threats, and got released his increment arrears to which he was not entitled. Accordingly he was served with a charge sheet for misconduct and also a memo as to why he should not be reverted to his substantive post of Draftsman to which he submitted a common reply on 8.12.97 (Annexure-R 20) in which he submitted that

- a) he had appeared for the viva voce sometime in 1985-86 but had never been called thereafter either orally or in writing by the office that he was yet to clear the same;
- b) that since he had not been reverted from the cadre of Inspectors, he was under the bonafide impression that he had cleared the said test;
- c) that he had been requesting the department for release of his increments and he had never been informed that he had not qualified in the departmental exam;
- d) that personal hearing be granted to him.

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4. Respondents state that they gave applicant a personal hearing on 15.12.97 in which he reiterated the above submissions and asserted that after a lapse of 10-12 years it was not right to ask him to appear for viva voce test and it was not fair at this late stage to inform him that he had not passed the same. Thereupon they issued the impugned order dated 19.1.98.

5. We have heard both sides.

6. Applicant was promoted as Inspector in 1985 and was required to clear the departmental exam. consisting of written test and viva voce within a specified period of time. He has cleared the written test and it is not respondents' case that his work was unsatisfactory during this period. If he had not cleared the viva voce within the prescribed period of time, or the prescribed chances, it was open to respondents to have reverted him, but they did not do so. It is only when he represented regarding his arrears of increments that respondents, after the passage of 10-12 years, suddenly ^{noticed} ~~discovered~~ that applicant had not cleared the viva voce. We are firmly of the view that it would neither be fair nor just to make applicant suffer for lapses on the part of respondents. It was respondents' responsibility to have informed applicant of the date on which the viva voce test was being held to enable him to appear in the same, and to have informed him of the results of the same each time he appeared

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in it, till the prescribed period/required number of chances were exhausted, and if he still failed to clear the viva voce test, respondents should have reverted applicant ^{as per} ~~under~~ the rules. Not having done so then, it is neither equitable nor just to permit respondents to do so now, after the lapse of over a decade, particularly as applicant has cleared the written test which forms an important part of the departmental exam., and there is nothing to indicate that his work as Inspector has not been satisfactory during this entire period.

7. Therefore in the facts and circumstances of this particular case, which should not be treated as a precedent, this OA succeeds and is allowed. The impugned order dated 19.1.98 is quashed and set aside, and the interim orders dated 23.1.98 restraining respondents from compelling applicant to join the post to which he has been reverted are made absolute. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER(J)

S. R. Adige

(S. R. ADIGE)
VICE CHAIRMAN (A).

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