

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 287 /19 98

DATE OF DECISION : 21-5-1998

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, , MEMBER ()

Sh Amarjit Singh ... Applicant(s)

-Versus-

Union of India & anr ... Respondent(s)

Advocates :

~~Mr.~~/Ms. Meera Chhibber for Applicant(s)

Mr./~~Ms.~~ R.R.Bharti for Respondent(s)

✓ 1. Whether to be referred to Reporter? yes

2. Whether to be circulated to other Benches? X

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(K. M. Agarwal)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.287/98

NEW DELHI, THIS THE 21st DAY OF MAY, 1998

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HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR. R.K.AHOOJA, MEMBER(A)

Shri Amarjit Singh
S/o Sh. Faquir Singh
Asstt. Commissioner, Customs
Room No.241, New Custom House
Near IGI Airport,
New Delhi.

... Applicant

(BY ADVOCATE MRS. MEERA CHHIBBER)

vs.

1. Union of India, through
Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. Chief Commissioner of Customs
& Central Excise,
C.R. Building, I.P.Estate,
New Delhi.

... Respondents

(BY ADVOCATE SHRI R.R.BHARTI)

ORDER

JUSTICE K.M.AGARWAL:

By this application under section 19 of the Administrative Tribunals Act, 1985, the applicant wants the order of reversion dated 29.1.1998 quashed.

2. The applicant joined the service of the Customs Department in 1986 as an Appraiser. By order dated 2.7.1997, (Annexure P-III Collectively), the applicant was promoted "on purely ad-hoc basis to officiate in the grade of Assistant Commissioner of Customs and Central Excise in the scale of Rs.2200-4000 with effect from the date (he assumed) charge of the higher post till further orders." By the impugned order dated 29.1.1998, (Annexure P-I), he has been reverted to his substantive post of Custom Appraiser without assigning any reasons and without holding any inquiry. It was

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alleged that his juniors, who were either simultaneously or subsequently promoted, were allowed to continue in the higher post and, therefore, the impugned order of reversion was punitive in nature and liable to be quashed for violation of Article 311(2) of the Constitution.

3. The respondents are resisting the application. In paragraph 4.5 of their counter, they alleged:

"4.5 Before promoting the applicant as Assistant Commissioner on ad hoc basis, vigilance clearance had been received from the Commissioner of Customs, Mumbai. However, subsequently, the office of the Commissioner of Customs, Mumbai informed the Ministry that the vigilance clearance in respect of the applicant communicated earlier, was wrong and as a matter of fact, prosecution had been launched against him on the allegation that he had entered into criminal conspiracy with an object to cheat customs of abusing his official position as public servant and that a charge sheet had been filed by the CBI, Ahmedabad on 22.9.95 in the court of Special Judge, Ahmedabad. The charge against the applicant is that he while posted and functioning as Appraiser Customs, Ahmedabad during the period 1992-93 entered into a criminal conspiracy with Parin Nanavati of Bombay and Shri Niranjan A. Brahmbhat of Ahmedabad with an object to cheat customs, Ahmedabad by abusing his official position as public servant and while committing aforesaid offences he did the following acts of commission and omissions."

In paragraph 4.6 of their return, it is further alleged:

"4.6 It is submitted that the lapse on the part of Mumbai Customs in not intimating the above case in regard to the pendency of the prosecution proceedings against the applicant occurred as the case had been registered by the CBI against the applicant when he was posted with Ahmedabad Commissionerate."

Then in subsequent paragraphs it is asserted that as per norms laid down by the D.O.P.T. in OM dated 14.9.1992,

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the sealed cover procedure ought to have been adopted by the DPC and that only after the conclusion of the criminal trial, the sealed cover could be opened and the applicant could be promoted. This could not be done because of the mistake committed by the Mumbai Customs in sending the vigilance clearance pertaining to the applicant. Accordingly the impugned order of reversion was tried to be justified as nothing but a step to rectify the mistake.

4. After hearing the learned counsel for the parties and perusing the record, we are of the view that the impugned order was not a simple order of reversion of an ad-hoc promotee to his substantive post and, therefore, it could be passed only after compliance with the requirements of natural justice, i.e., after giving him an opportunity of being heard before passing the order. This having not been done, the impugned order deserves to be quashed. Our view is supported by a decision of this Bench of the Tribunal in **Jagdish Singh Yadav v. Union of India**, O.A. NO.1 of 1998, decided on 24.2.1998; and **Appar Apar Singh v. State of Punjab**, 1971 SLR (SC) 71.

5. For the foregoing reasons, this application is allowed and the impugned order dated 29.1.1998, (Annexure P-I), is hereby quashed with the result that the applicant shall be treated to be continuing in the post of Assistant Commissioner of Customs from the date of his promotion to the date of this order. No costs.

6. We wish to make it clear that we have our own doubts about the correctness of the statement in paragraph 4.9 of the application that the applicant was sanctioned casual leave w.e.f. 27.1.1998 to 6.2.1998, because as per rules, casual leave for a period of more

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than 8 days at a time is ordinarily not permissible. What happened after 6.2.1998, whether he resumed his duties or remained absent, is also not clear to us. Accordingly if the absence is found to be unauthorised, the respondents shall not be precluded from taking such action in accordance with law as may be advised to them, on the face of our order allowing the said application.

K.M.

(K.M.AGARWAL)
CHAIRMAN

R.K.

(R.K.AHOOJA)
MEMBER (A)

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