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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 1488 of 1994

New Delhi, dated the 6th November 1995

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

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

1. General Secretary,
Delhi Collectorate Customs &
Central Excise Ministerial
Officers Association,
I.P. Estate, C.R.C.R. Building,
New Delhi-110002.
2. Shri Rajeev Mirchia,
S/o late Shri K.K. Mirchia,
Upper Division Clerk,
Delhi Collectorate Customs & Central
Excise, New Delhi.
3. Shri K. Venkatesh,
S/o Shri N.K. Shastri,
Lower Division Clerk,
Delhi Collectorate of Customs
& Central Excise,
New Delhi-110002.
R/o M-193, Vikaspuri,
New Delhi.

... APPLICANTS

(By Advocate: Shri K.L. Bhandula
and Shri R.P. Oberoi)

VERSUS

1. Union of India through
the Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block, New Delhi-110001.
2. The Member (P&V),
Central Board of Excise & Customs,
I.P. Estate, C.R.C.R. Building
New Delhi-110002.
3. The Collector,
Delhi Excise & Customs Collectorate,
I.P. Estate, C.R. Building,
New Delhi.
4. The Secretary,
Dept. of Personnel & Training,
Ministry of Personnel, Pension, Public
Grievances, etc.
New Delhi.

... RESPONDENTS

(By Advocate: Shri R.R. Bharti)

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5. Mrs. Kiran Bala Sethi,
R/o D-65, Amar Colony
Lajpat Nagar,
New Delhi.
and 23 others ..

.... PRIVATE RESPONDENTS

(By Advocate: Dr. Surat Singh
with Shri Sunil Mund)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application the General Secretary, Delhi Collectorate Customs & C. Excise Ministerial Officers Association and two others have sought for a direction to quash the order dated 13.8.89 (Ann. 6) absorbing employees of S & I in the Ministerial cadres of Delhi Collectorate allegedly against the provisions of the recruitment rules and Govt. decision, and also to quash the seniority lists dated 2.7.92 (Annexure III), and 15.7.92 (Ann. V); as well as to quash the promotion orders to the cadre of UDCs dated 3.7.92 (Ann. IV) and the modified seniority lists issued in May, 1994 (Annexure VII and IX).

2. The applicants state that all except four of them, joined the Delhi Excise & Customs Collectorate as LDCs from 1986 onwards, through a competitive examination held by the Staff Selection Commission in accordance with the recruitment rules which provided for 90% direct recruitment and 10% promotion from

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Group 'D' employees of the department. They state that there is no provision regarding absorbing of employees of other deputationists. However, there are instructions regarding taking up of surplus employees of other departments, but they are to get seniority from the dates of joining the department and not from their initial dates of appointment in the department when they were declared surplus. It is further stated that in 1986 consequent to a pilot Computerisation Project started in the Delhi Collectorate the Finance Ministry called upon the Director Statistics and Intelligence to deploy on purely temporary and loan basis, 42 LDCs/Key Punch Operators to Delhi Collectorate for providing technical know how, and they were liable to be sent back to Directorate of S & I. These employees were to remain in the cadre of S & I, draw their pay from there, and to continue to enjoy all the benefits in their own cadre (Ann. XI). These employees later on claimed that they should be treated as on deputation or given special pay, but this were not allowed. According to the applicants, later on the respondents decided to absorb these employees in the Delhi Collectorate in corresponding cadre to ensure that these persons would be deployed on computerisation work (Ann. II). There orders for their absorption with retrospective dates were issued in 1989, and they were given promotions as UDC on 3rd July, 1992 on the basis of their seniority from the initial date of their appointment.

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the applicants state that they filed representations from time to time, but none of their representations have been replied to. Instead of absorbing them in the corresponding cadres, and creating a specific and defacto cadre for those directly related to computerisation, the applicants allege that by absorbing these persons from Directorate of S&I as LDCs and giving them seniority from the date of their initial appointment in that Directorate, these persons now rank senior to the applicants, by virtue of which they are being promoted as UDCs and above, denying the applicants their chances of promotion, which is against the recruitment rules and a violation of the principle of natural justice and also of Articles 14 and 16 of the Constitution, which requires judicial interference.

3. The official respondents in their reply have challenged the contents of the O.A. They state that in connection with the computerisation project, a total of 277 posts were sanctioned for the Delhi Commissionerate during 1986-87 including 162 posts of LDCs/ Terminal Operators which were in the same pay scale as existing LDC posts in Delhi Collectorate i.e. Rs.950-1500. These 162 posts were filled up in three ways viz. 42 UDCs/LDCs/KPOs were taken on transfer on temporary basis from the Directorate of S&I; 13 were recruited as KPOs

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through employment exchange; and remaining 107 along with existing vacancies in the cadre of LDCs were filled up through SSC besides by promotion from Group 'D' staff on 10% quota. Furthermore the 277 posts also included posts of UDCs/Data Entry Verifier which were filled by promotion of LDCs and direct recruitment as UDCs from SSC, while other posts still higher in the hierarchy amongst these 277 posts were filled ~~purely~~ ^{purely} by promotion. According to the official respondents, the sanction orders merely indicated LDCs/Terminal Operators and there was no condition that they would not be interchangeable. In the absence of a clear indication that Terminal operators and KPOs formed a separate cadre, all persons recruited as KPOs/Terminal Operators were treated as LDCs and were interchangeable with other posts of LDC for posting in computer work, ~~other~~ ^{* on related work} other than that relating to computers. Thus although these 42 staff from Directorate of S & I ~~were~~ ^A diverted to the Delhi Collectorate on a purely temporary arrangement, and they were to draw their pay and allowances from their parent Directorate, and could be reverted back at any time, various factors, including absence of a clear compartmentalisation between LDCs on the one hand and Terminal Operators/KPOs on the other, the administrative interest, which required the continuation of these persons in the Delhi

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Collectorate, coupled with the dissatisfaction of these 42 persons with the existing arrangements, led the official respondents to issue orders dated 9.5.89 (Annexure R-V) absorbing these 42 officers in the Delhi customs & C.E. Collectorate w.e.f. the date of their joining the Collectorate and directing that their pay and allowances would henceforth be drawn from the Delhi Collectorate. Later on in consultation with D.P.A.R. by order 16.6.92 (Annexure II) these 42 absorbed officials were accorded seniority w.e.f. the dates they had joined in the Directorate of S & I, and promotion to higher posts ~~in~~^{work} being made in the background of the same, which is fully in accordance with law.

4. The ~~in~~ absorbed officers were also made a party in this O.A. and some of them have filed their reply in which, while fully agreeing with the reply of the official respondents, attention has been focussed to the reply given to Rajya Sabha Question No. 2708 dated 17.12.91 stating that as the transfer of these 42 officials from the Directorate of S & I to the Delhi Collectorate was made in the public interest in the exigencies of work, the Delhi Collectorate had been advised to fix their seniority with reference to their date of joining in the Directorate of S & I.

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5. During the course of hearing applicants' counsel Shri Oberoi invited our attention to several official documents in support of Govt.'s intention in principle to create a separate cadre for Electronic Data Processing Personnel. In paragraphs 11.44 and 11.45 of their Report, the 4th pay Commission had noted that there were about 4000 EDP Posts in 21 departments and while they agreed that there should be a regularly constituted service for staff engaged in this work, a separate cadre for EDP officers at this stage may not be feasible. At present what was required was to expose employees to EDP discipline so that their skills were upgraded, but as a long term policy it was desirable that a separate EDP cadre be formed. In this background, the Committee set up by the Department of Electronics had recommended the formation of a separate EDP cadre; a formal pay structure for EDP posts had been formulated vide Dept. of Expenditure, Ministry of Finance O.M. dated 11.9.89; the Dept. of Personnel & Training had framed model recruitment rules for EDP personnel vide O.M. dated 13.2.90; and Dept. of Revenue, Ministry of Finance had issued notification dated 3.4.92 framing their own recruitment rules for EDP personnel.

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belonging to their department. In the light of all these documents, we asked the official respondents during hearing to state why they had been unable to form a separate cadre for EDP personnel in the Delhi Collectorate.

6. The official respondents have filed an affidavit on this point, emphasising that prior to 3.4.92, the date on which the recruitment rules were notified, there was no separate cadre of EDP personnel in the Delhi Customs & Excise Commissionerate, through 277 posts in different categories had been separately sanctioned for EDP work. All the Group 'C' sanctioned for EDP work being treated as part and parcel of/combined cadre of the Ministerial staff of the Delhi Customs and C. Excise Commissionerate and the incumbents appointed against these posts, whether by deployment from the Directorate of S & I, or through direct recruitment/promotion in the Delhi C & CE Commissionerate, were included in the combined cadre for the purpose of seniority, promotion etc. It is in this background that some personnel of the Directorate of S & I who were absorbed in the Delhi C & C E Commissionerate got promoted to the higher grades on the basis of their seniority and suitability. The respondents also point out that in terms of Rule 5 of the above mentioned recruitment rules, all persons appointed

on regular basis as KPOs, T.Os and IDCs performing the duties of T.Os before the commencement of these rules, shall be deemed to have been appointed as Data Entry Operator Grade 'A' under the rules. The official respondents state that a decision is required to be taken in regard to the persons who will be included in the cadre of Data Entry Operator Grade 'A' at the time of initial constitution of the cadre. They state that the IDCs/IDCs/KPOs were initially recruited in the Directorate of S & I and were subsequently transferred to Delhi C & CE Commissionerate, and hence there is some difficulty in absorbing them in the EDP cadre, and also because this very question is the subject matter of litigation in the present O.A.

15. We have heard Shri R.P. Oberoi for the applicants; Shri R.R. Bharti for the official respondents and Shri Surat Singh for the private respondents i.e. those personnel from the Directorate of Statistics and Intelligence who were deployed in the Delhi Collectorate. Shri Singh has urged that while his clients no doubt were deputed to the Delhi Collectorate for providing technical knowhow for computer operations, in effect they were put to work only as clerical staff, and over the years became undistinguishable from the clerical staff in the Delhi Collectorate and have progressively lost whatever few computer skills they possessed. Meanwhile, on the basis of their absorption, some of them had also been promoted to higher posts in the clerical cadre in the Delhi Collectorate. Shri Surat Singh strongly emphasised that these facts would have to be squarely faced by the respondents while implementing the decision to create a separate EDP cadre, and such implementation should not affect his clients adversely.

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18. We have considered this matter carefully.

19. We note from the contents of paragraph 8 of the additional affidavit dated 8.9.95 filed by the respondents that they themselves admit that action is required to be taken for the formation of a separate EDP cadre in the Delhi C & CE, Commissionerate which inter alia would also determine the persons who would be included in the cadre of Data Entry Operator Group 'A' at the time of initial constitution of the cadre in the background of the contents of Rule 5 EDP Discipline (Group 'C' Technical Posts) Recruitment Rules, 1992 . The constraint that the respondents appear to face, is the pendency of the present O.A. We propose to remove this constraint by disposing of this O.A., without adjudicating upon the claims of the applicants on merits ^{at this stage} but with a direction to the respondents to treat the O.A. and its supporting documents ~~at this stage~~ as the applicants' representation and to take a final decision in the matter in the light of their own averments as contained in their additional affidavit, within 4 months from the date of receipt of a copy of this judgment. While taking this final decision, the respondents will address themselves to each of the reliefs prayed for by the applicants in this O.A. and dispose of the same by a detailed speaking and reasoned order after giving the representatives of the 42 absorbed officials also an opportunity

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of being heard. Any promotions made between now and the date of that final decision will be subject to the outcome of that final decision, which should be made clear in the body of the promotion order itself. If any grievance survives after the respondents take that final decision and dispose of the reliefs of the applicants prayed for as mentioned above, it will be open to them to challenge the same in appropriate original proceedings in accordance with law, if so advised.

¶ 10. This O.A. is disposed of in terms of the contents of paragraph 9 above. No costs.

A. VedaVali
(DR. A. VEDAVALI)
MEMBER (J)

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(S. R. ALIGE)
MEMBER (A)

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