

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.2496/2000

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

New Delhi, this the 17th day of July, 2001

Shri Budha Lal Meena  
s/o Shri Shukla Ram  
Permanent  
r/o Village Rattangarh  
Post - Pala, Via - Mala Khera  
Dist - Alwar  
Rajasthan. ... Applicant  
(By Advocate: Shri A.K.Behera)

Vs.

1. Union of India through  
The Secretary to the Govt. of India  
Ministry of Finance  
Department of Revenue  
North Block  
New Delhi - 110 001.
2. Chairman  
Central Board of Customs and Excise  
North Block  
New Delhi - 110 001.
3. The Secretary  
Union Public Service Commission  
Dholpur House  
Shahjahan Road  
New Delhi. ... Respondents  
(By Advocate: Shri R.R.Bharati)

O R D E R (Oral)

By Shri Govindan S. Tampi, Member(A):

Heard the learned counsel for the parties on either side - Shri A.K.Behera for the applicant and Shri R.R.Bharati for the respondents.

2. The applicant who belongs to Scheduled Tribe, joined the Customs and Central Excise Service, Group 'A' on qualifying in the I.A.S. etc. Examination, 1979, when he was put on probation for two years. He appeared in the Departmental Examination for the first time in 1982 and by 1985 he was declared to have passed all papers except Paper II(Part I), i.e., Customs Law, Tariff and Procedure.

The applicant states that though he was entitled for the relaxed standards, he was not given such benefit. On the ground that he had not cleared all the papers in the Departmental Examination, the respondents terminated his services on 26.2.1986. The said termination order was challenged by him in OA No.1650/87 as before the Principal Bench of the Tribunal and by order dated 10.4.1992 the same was disposed of, setting aside the order dated 16.10.1986 with a direction to the respondents for considering the appeal of the applicant in consultation with the Union Public Service Commission (in short 'UPSC') and dispose it by means of a speaking order covering all the points taken by the applicant. 9

3. The respondents, though considered the applicant's representation in consultation with UPSC, did not accede to the request and the decision of rejection was communicated to the applicant. Thereafter, OA 410/94 was filed by the applicant which was decided on 19.3.1999 by this Bench with the following directions:

"For the above reasons, this application is allowed and the impugned orders are set aside. The respondents are directed to give the applicant the benefit of OM dated 23.12.70 in respect of paper II (part I) of the departmental examination which he took in first attempt and secured 90 marks by giving requisite relaxation and then to pass appropriate orders with regard to the issue of satisfactory completion of the probationary period. This shall be done within 3 months from the date of receipt of a copy of this order. If the respondents pass an order declaring the applicant to have completed his probationary period satisfactory then the applicant shall be reinstated without back wages but grant him continuity of service from the date of his removal till the date of his reinstatement treating the period as dies non. No costs."

h2

4. Following the above, Ministry of Finance, Department of Revenue issued Officer Order No.282/99 in F.No.C-18011/4/94-AD.II, dated 17.11.1999 which reads as under:

10

"Consequent upon re-consideration of the case of Shri B.L.Meena, an IC&CES Probationer of 1980 batch who had been discharged from service on account of his failure to secure minimum qualifying marks in one of the papers prescribed for the probationers at the NACEN vide this Department's memorandum dated 26th Feb., 1986 for clearance of probation, in compliance with the order dated 19.3.1999 passed by the Hon'ble CAT Pr. Bench, Delhi in O.A.No.410/84 and the Screening Committee on reconsideration having declared him as having successfully qualified in the departmental examination and also fit for clearance of probation, the President is pleased to reinstate Shri B.L.Meena in IC&CES, with immediate effect. On his reinstatement in IC&CES, Shri B.C.Meena is posted on DCCE, Calcutta.

On his reinstatement Shri B.L.Meena is not entitled to any back wages and the period from the date of termination of his service till the date of reinstatement will be treated as dies-non."

5. This order is under challenge in the present OA. According to the applicant this order of the Ministry of Finance, flies in the face of the order of the Tribunal wherein it has specifically been mentioned that "the applicant shall be reinstated with back-wages but grant him continuity of service from the date of his removal till the date of his reinstatement in service treating the period as dies-non". The expression 'dies non' does not affect the aspect of continuity in service but only refers to back-wages. The denial of the continuity in service which has been expressly directed in the Tribunal's order was wrong and unjustified. He states that the person who is immediately junior to him and belonging to the next batch has already become a Joint Commissioner of Customs and Excise, two or three years ago, whereas he has been forced to languish as Asstt. Commissioner without any prospect of advancement in

h

career. He was thus placed in a pitiable condition. Shri Behera, learned counsel for the applicant relied upon the decision of the Tribunal dated 11.12.1991 in OA 2214/90 filed by Vimal Chandra Pandey Vs. Union of India and Others, which according to him was issued in similar circumstances and covered the instant case squarely. (11)

6. Rebutting strongly, the points raised on behalf of the applicant, Shri R.R.Bharati, learned counsel for the respondents states that the Department has the best of their understanding given affect to the order and have in fact they almost reproduced the directions of the Tribunal in the impugned order. This was the maximum benefit which the Department could have granted. Reference to continuity of service was not included as according to him, <sup>as</sup> the Department could not have given the benefit of continuity of service to the applicant as he did not at all have any regular service and granting him of service and making him eligible for promotion would <sup>have</sup> been against other instructions governing promotions specially to Jr. Admn. Grade. Tribunal in the circumstances, cannot be requested to grant any further relief, argues Shri Bharati.

7. We have carefully considered the rival contentions in this matter. Order of the Tribunal dated 19.3.1999, disposing of the OA No.410/94 had specifically mentioned that "if the respondents pass an order declaring the applicant to have completed, his probationary period satisfactorily then the applicant shall be reinstated without back wages but

grant him continuity of service from the date of his removal till the date of his reinstatement treating the period as dies non." The order dated 17.11.1999 passed by the respondents, mentions that "the Screening Committee, on reconsideration having declared him as having successfully qualified in the departmental examination and also fit for clearance of probation, the President is pleased to reinstate Shri B.L.Meena, in IC&CES with immediate effect" and that on such reinstatement he is posted as ACCE, Calcutta. Obviously therefore according to <sup>US</sup> ~~therefore~~ the individual has cleared the examination and successfully completed his probation period. That being the case, it follows that he would be entitled to continuity in service and benefits arising therefrom but without backwages. To deny him that is to act against the letter and spirit of the order. The order posting him back as Assistant Commissioner, after he has completed nearly 20 years of service, - continuity of service having been given to him - would also be against the spirit of the order. Even otherwise, he was due for being considered for grant of Senior Time Scale (presently the post of Dy. Commissioner of Customs & Excise) at the time of removal from service, completed six years. Now that the respondents having come to the conclusion that the applicant has successfully completed the probation, he would rightly be entitled for consideration for promotion as Deputy Commissioner of Customs and Excise, like other officers of his batch or at least immediate junior. The next promotion to the grade as Jt. Commissioner is a matter of Selection, which the

12

h2

respondents would have to examine, preferably in consultation with UPSC and DoPT at the appropriate time.

13

8. We have also perused the decision of the Tribunal in the case of Vimal Chopra Pandey (supra) but we find that the facts in the said case and the instant OA are not similar and therefore application of the said decision cannot be automatic in this case. In spite of that the applicant is entitled for the grant of relief, sought for, which flows directly from the Tribunal's decision in 19.3.1999 in OA 410/94.

9. In view of the above, application succeeds to a substantial extent and is accordingly allowed. The respondents are directed to grant to the applicant the continuity of service, in terms of Tribunal's order dated 19.3.1999 while disposing of the OA No.410/94. Impugned order stands modified to the extent that the applicant would be entitled for continuity of service with consequential benefits, if any, but without back wages and the intervening period between dates of removal and reinstatement being treated as dies non. The respondents are also directed to consider the case of the applicant for promotion to the post of Deputy Commissioner of Customs and Excise from the date on which his immediate junior was promoted to Senior Time Scale, in accordance with rules, within a period of three months from the date of receipt of a copy of this order. No order to costs.

10. Operative portion of the order was pronounced in Court.

S. Raju  
(SHANKER RAJU)  
MEMBER(J)

Govindan S. Tampi  
(GOVINDAN S. TAMPI)  
MEMBER(A)