

Central Administratrive Tribunal, Principal Bench

O.A.No.2625/91

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

(3)

New Delhi, this 28th day of February, 1997

Shri G.P. Bairagi
s/o Shri Late L. Bairagi
working as U.D.C.
Directorate of Publication
Customs and Central Excise
C.R. Building
New Delhi. Applicant

(By Shri S.K.Gupta, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Finance
North Block
New Delhi - 1.
2. Secretary
Central Board of Excise of Customs
Jeevan Deep Building
Parliament Street
New Delhi - 110 001.
3. Director
Directorate of Publication
Customs and Central Excise
Gagan Deep Building
Rejendra Place
New Delhi. Respondents

(None)

O R D E R

R.K.Ahooja, Member(A)

The applicant belonging to Scheduled Caste community, while working as an Upper Division Clerk(UDC) was promoted, on an ad hoc basis, to the post of Deputy Officer Superintendent Level-II (DOSL2) vide order dated 09.3.1989. The post of DOSL2 carries a pay scale of Rs.1400-2300 and is filled by promotion on a non-selection basis from amongst UDC with 5 years regular service. There is another post of Assistant carrying a pay scale of Rs.1400-2600 which is filled by 'selection' from amongst UDCs with 5 years regular service in the grade or 2 years regular service as DOSL2. The applicant

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represented that since he was eligible, having rendered 5 years regular service as UDC, both for the post of DOSL2 as well as Assistant, he should have been given an option and as the post reserved for Scheduled Caste was available in the cadre of Assistant, he should have been promoted to the grade of Assistant. The applicant states that as a result of his representation, the respondents promoted him as an Assistant on ad hoc basis vide letter dated 9.11.1989 (Annexure A5) but by the impugned order dated 31.10.1991 (A1), he was reverted on the untenable grounds that his promotion as Assistant was made on the basis of a proposed amendment to the Recruitment Rules when in fact he was already eligible under the existing notified recruitment rules. He has now come before the Tribunal against the impugned order with a prayer to quash the impugned order of reversion (A1) and to have him treated as an Assistant from 9.3.1989, the date on which he became eligible for the post of Assistant, for all purposes.

2. The respondents in their reply have denied the assertions of the applicant that he was eligible for the post of Assistant as per the existing Recruitment Rules. Furthermore, they have stated that the applicant had willingly accepted the promotion to the post of DOSL2 and having done so he could not now seek promotion to the alternative post of Assistant. The respondents later filed an additional affidavit in which they took further grounds to challenge the claim of the applicant. In this additional affidavit they state that the Directorate of Publications was newly set up and after framing proposed Recruitment Rules of Assistants, ad hoc promotions were made. In the process two persons were taken on deputation but in the absence of rules of absorption, they had been reverted back thus creating vacancies. Later, however, their representations were accepted by the Department

of Expenditure, Ministry of Finance and they were brought back. At the same time, the Staff Inspection Unit (SIU) made certain proposals and reduced the number of posts of Assistants and DOSL2 and DOSL1. On that account alone the applicant could not be considered for promotion to the post of Assistant. Further more, they contend that the applicant was initially recruited as an LDC. The rules allowed for promotion from the grade of LDC to UDC on completing 5 years regular service but the Administrative Ministry was persuaded to allow an exception in the case of the applicant who was promoted in 1984, after completing around four years of service, as LDC with a stipulation that till the completion of 5 years of his regular appointment his service as UDC would not count towards seniority for the purposes of promotion. The applicant thus having become regular UDC only in 1985, was eligible for further promotion as DOSL2 or an Assistant only in the year 1990. Thus, he was not eligible for promotion to either of the posts in 1989. His promotion was only on adhoc basis and therefore created no vested right for his continuation.

3. We have heard Shri S.K.Gupta, learned counsel for the applicant but none, however, appeared for the respondents. The first point to be considered is whether the applicant was eligible for consideration for the post of Assistant on the basis of the existing Recruitment Rules. A copy of the Recruitment Rules, G.S.R.477 dated 18.6.1988 has been annexed as A7. The post of DOSL2 is at Serial No.3. It is a non-selection post, to be filled by promotion from amongst UDCs with 5 years regular service in the grade or Stenographer Grade-III with 5 years regular service. The post of Assistant at Serial No.4, is a selection post to be filled in by promotion failing which by deputation and failing both by

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transfer. The 'promotion' is from amongst UDCs with 5 years regular service in the grade, or 'by transfer/deputation' from amongst UDCs with 5 years regular service in the grade working in the offices under Central Board of Excise and Customs.

4. It is significant that the following proposed amendments are mentioned for the post of DOSL2 and Assistant at the bottom of the said Recruitment Rules at page 48 and 50 respectively:

Proposed amendment for:

DOSL2: "Persons on deputation may be considered for absorption provided they submit their willingness within 2 years of their joining and is/are found suitable."

Assistant: "Persons on deputation may be considered for absorption provided they submit their willingness within 2 years of their joining and is/are found suitable."

5. It is clear that the change proposed by way of an amendment in the Recruitment Rules is only in regard to absorption of deputationists. The ground taken in the reversion order (A1) that the ad hoc promotion of the applicant was being set-aside because it had been made on the basis of the proposed amendment was thus patently wrong. Impugned order (A1) is therefore liable to be quashed in so far as the applicant is concerned. It is accordingly so ordered.

6. The question is whether the applicant had any vested right to continue as an Assistant. The Recruitment Rules provide that the post of Assistant is a selection post. The applicant claims that he had already been cleared for the post of DOSL2. There is however, material difference in promotion to the post of DOSL2 and Assistant since in the first case, the promotion is by non-selection method and in the second by selection. Recommendation of DPC for a non-selection post

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cannot take the place of DPC for a selection post. Thus, the appointment of the applicant as an Assistant was not by way of recommendation of an appropriate DPC as provided in the Recruitment Rules. The applicant thus has no right on that ground to continue as an Assistant.

7. The respondents have in their additional affidavit pointed that due to the recommendations of the Staff Inspection Unit, the number of posts of DOS and Assistants had to be reduced and presently only 5 posts altogether were available. The applicant cannot have a right for ad hoc promotion in preference to his seniors. Therefore, he cannot continue as an Assistant so long as the adequate number of seniors are available for the post of DOSL2 and Assistant. It is however, mentioned by the respondents in their additional affidavit that the applicant has been, after his reversion, again promoted as DOSL2 from 1992. He is still continuing as such.

8. In the light of the above discussion and the facts and circumstances of the case we dispose of this Original Application with the following directions:

i) the impugned order of reversion dated 31.10.1991, A1 is set-aside.

ii) the applicant will be treated to continue as Assistant so long as the post is available for him, in accordance with his seniority and his community status, subject to a proper selection being made for the post of Assistant in accordance with the Recruitment Rules.

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iii) the applicant would be entitled to the arrears of pay on the difference between the pay actually drawn and the pay he would have drawn as an Assistant for the period determined under direction (ii) above. He will however, be not entitled to any interest on such arrears.

9. The respondents are directed to comply with these directions within a period of two months from the date of communication of this order. No costs.

Rao
(R.K.AHOOJA)
MEMBER(A)

/rao/

Lakshmi
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)