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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1005/2004

New Delhi, this the 02nd day of May, 2006

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri L.R. Meena & Anr.
(By Advocate: Dr. M.P. Raju)

.....APPLICANTS

VERSUS

Union of India through,
The Secretary, M/o Finance & Ors.
(By Advocate : Shri R.V. Sinha)

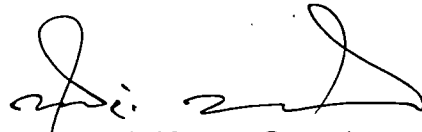
.....RESPONDENTS.

1. To be referred to the Reporter or not.

✓
Yes / No

2. To be circulated to other Benches or not.

✓
Yes / No.


(Mukesh Kumar Gupta)
Member (J)

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

1. Shri L.R. Meena,
S/o Late Shri G.L. Meena
Aged about 41 years,
R/o A-4/18, Jeevan Jyoti Apartments, Pitampura,
New Delhi

2. Shri Telesphere Kujur,
S/o Shri J. Kujur,
Aged about 44 years,
R/o BD-913, Sarojini Nagar,
New Delhi

(By Advocate : Dr. M.P. Raju)

...APPLICANTS

VERSUS

1. Union of India through
Secretary, M/o Finance,
Department of Revenue,
North Block, New Delhi

2. The Chief Commissioner,
Central Excise, Delhi Commissionerate,
C.R. Building, I.P. Estate,
New Delhi

3. The Commissioner of Central Excise, Delhi-I
C.R. Building, I.P. Estate,
New Delhi

...RESPONDENTS

(By Advocate: Sh. R.V.Sinha)

ORDER

BY MUKESH KUMAR GUPTA, MEMBER (J):

Two Applicants in this OA challenge communication dated 21.04.2003 rejecting their representation requesting consideration for promotion to the next higher post of Superintendent. They also seek extension of benefit of order dated 10.12.1998 in OA No. 386 of 1997 P.K.G. Kurup & Others vs. Union of India & Others with connected matters of the Mumbai Bench of this Tribunal. Applicants also seek direction to Respondents to consider them for promotion to the aforementioned post "by counting the ad hoc service as regular" with consequential benefits and costs.

2. The factual matrix of the case is that the applicant No. 1 was initially appointed as UDC on 13.08.1987, promoted as Tax Assistant in August, 1991 and as an Inspector vide

/s/



order dated 31.03.1992 joined w.e.f. 01.05.1992. Applicant No.2 was appointed as LDC on 11.10.1982, promoted as UDC on 23.4.1987, Tax Assistant in August 1991 and as an Inspector vide order dated 31.03.1992, joined on 10.04.1992. The said promotion as Inspector was treated as ad hoc and they were regularized with w.e.f. 13.12.1995. Both of them belong to ST community. A seniority list as of 23.11.2001 was issued by the Respondents vide letter of the said date, but it was not intimated to them. They came to know about it when some of their juniors filed OA No.2475/2002 before this Tribunal and the said seniority list was annexed by Respondents along with their reply. In the said seniority list, the applicants figure at serial No. 782 and 778 respectively. Similarly placed Preventive Officers, posted in Mumbai approached Mumbai Bench of this Tribunal vide OA No.386 of 1997 seeking counting of ad hoc service for purpose of eligibility to next higher post, which was allowed vide order dated 10.12.1998. A DPC was held in July 2002 & vide order dated 12.02.2004, applicants juniors were promoted as Superintendents, ignoring their claim. Representation dated 3.10.2002 had been rejected vide impugned communication dated 21.04.2003. The contention raised is that they were promoted as Inspector by a duly constituted DPC as per rules against regular vacancies meant for ST promotion quota, yet their promotions had been treated ad hoc without any justification, though it was not a stop gap arrangement. Dr. M.P. Raju, learned counsel for applicants contended that they had appeared in the departmental examination for promotion to the grade of Inspector and were declared qualified. They were also directed to appear for interview for promotion to the said grade "on regular/ad hoc basis" which was slated for 09.03.1992. Vide Establishment order No.73/92 dated 31.03.1992, they were promoted to officiate as Inspector, Central Excise, but it was treated to be ad hoc. They were regularized vide order dated 13.12.1995.

3. Respondents contested applicants' claim stating that they were initially promoted as Inspector on ad hoc basis against ad hoc vacancies. Since they did not have required qualifying service for promotion to the next higher post, they were not considered by the DPC held in July 2002. The benefit of ad hoc promotion cannot be given to them as "the ad hoc promotions were not made against regular vacancies, but were against the ad hoc vacancies only". The plea of limitation was also raised.



4. Applicants' filed detailed rejoinder controverting the plea raised by respondents and reiterating that they were promoted "on ad hoc basis against regular vacancies meant for ST category in promotees' quota." The National Commission for SC/ST also sought explanation from Respondents, who misrepresented and misled the said Commission vide reply dated 16.7.2004. We may note that three points were raised by them and the same were dealt with by the respondents. The relevant portion of the same read as under:

"The points raised by the officer in his above referred representation are as under:

- (1) that he was promoted as Inspector of Central Excise on 31.3.92/1.4.92 against reserved vacancy for ST category and is continuously working under the same grade and was later regularized on 13.12.95.*
- (2) That no DPC was held for period of more than 3 ½ years.*
- (3) that regular vacancy meant for ST category was lying vacant in the year 1992 but he was promoted as ad-hoc Inspector due to the tendency in the Central Govt. Offices to pool together long term and short terms vacancies while applying reservation.*

Point-wise comments on the above points are as under:

- (1) That the applicant was promoted to the post of Inspector (CE) on 31.3.1992/1.4.1992 only on adhoc basis against adhoc vacancy. The applicant was appointed on a regular basis to the grade of Inspector only in 1995. The officer is therefore holding the substantive post of Inspector only w.e.f. the date of his regular promotion. That seniority in a grade is determined from the date of regular promotion only and no seniority can be assigned to a person in a grade to which he had yet to be appointed substantively. During the adhoc period the applicant was substantively holding another post (lower post/feeder post).*


It is also submitted that the judgment dated 10.12.98 in OA No. 386 of 1997 quoted by the applicant is not applicable in the present case as the promotions to the post of Inspector were made against adhoc vacancies only and not against regular vacancies.

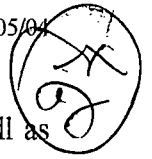
- (2) That the DPCs could not be conducted during the said period due to non availability of vacancies, and subsequently on account of matter being subjudice in CAT, DPC could only be held on 13.12.95.*
- (3) that in Delhi Commissionerate, DPCs were held for promotion to the grade of Inspector by computing total number of vacancies in a vacancy year (financial year) including adhoc vacancies on account of Cost Recovery posts and other short-term vacancies and promotions are effected on adhoc basis. Regular promotions were made against the regular vacancies by way of regularization of promotion of those who had already been working as adhoc Inspectors. However, the aforementioned practice has since been dispensed with and now the regular promotions and adhoc promotions are not being clubbed together.*

It is also to inform that promotion to the post of Inspector were on selection-cum-fitness" basis in which an eligible candidate who figures anywhere in the zone of consideration could be selected and



placed anywhere in the select panel on the basis of his/her merit acquired in the selection."

5. The applicants also stated that in the year 1992 only 6 ST candidates were promoted, including them against 9 posts and vacancies on roster point for ST category and therefore, there is no substance in the stand taken by the respondents that applicants were regularized against the ST vacancies in the year 1995. As many as 28 promotions were made in the year 1989 which included only one ST official. Similarly, in the year 1990 against the 14 promotions made, none belong to the said ST category. In the year 1991, against 41 promotions only one was ST candidate. In the year 1992 against 17 promotees none belong to the said category. For 13 promotions made in the year 1993, only one belongs to ST community. Thus, examining from any angle, there had been back-log/carry forward vacancies apart from fresh vacancies arising in the concerned years, against which they should have been regularized.
6. The applicants also preferred MA No. 1796 of 2004 seeking directions to Respondents to produce roster relating to reservations in favour SC/ST categories in the cadre of Inspector upto the year 1995, minutes and records of DPC for the year 1992 upto 1995 as well as details of year-wise vacancies. In reply thereto, Respondents submitted that in the year 1992, DPC was informed about existence of 33 ad hoc vacancies, out of which 6 belong to ST category. Promotion orders of 33 candidates were issued vide Estt. Order No.73/92 dated 31.3.1992. Six vacancies were meant for ST category, which included carry forward vacancies.
7. Since the entire claim of the applicants hinge on existence of actual vacancies in the year 1992, direction was issued to Respondents to produce the relevant records.
8. We have heard Dr. M.P. Raju and R.V. Sinha, learned counsel for parties and perused the pleadings carefully. The Register describing as roster maintained for the post of Inspector in terms of DOP&T OM dated 25.4.1989 was produced before us.
9. The basic issue which needs consideration & adjudication is whether applicants were promoted in the year to the post of Inspector on regular or ad-hoc basis & what was the nature of vacancies against which such promotions were made? If the answer to the aforesaid issue is in favour of applicants, the further issue which would need attention is what relief could be allowed to applicant at this stage?
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10. After hearing rival contention of parties and upon perusal of pleadings as well as records produced before us, we find admitted factual aspects are as under:

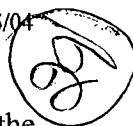
11. That in the cadre of Inspector in the year 1991, there had been two carried forward regular vacancies meant for ST category and one more fell vacant. Since none of such vacancies could be filled from the said category, all three vacancies were carry forwarded to the next year 1992. In the year 1992, three more fresh vacancies came into existence for the said Community, raising the No to six.

12. Vide order dated 31.03.1992, 33 officials were promoted as Inspector, including applicants herein. Their names figure at serial Nos. 29 and 30 respectively. We may note that the officials who figure at serial No. 28 to 33 in the aforementioned order, all belong to ST community. From perusal of aforementioned record, we also find that all these six officials have been shown to be promoted against six regular vacancies, making the closing balance for ST community as nil.

13. In view of these facts & circumstances, we are surprised and amazed how the applicants and four others who had consumed all six vacancies meant for ST category, in the year 1992 itself as per Respondents' own contemporary record, could be treated promoted on ad hoc basis since the said year till the year 1995 and that too for want of vacancies, as projected. We may note that the applicants were at Sl. No 2 & 3 respectively amongst the 6 ST officials promoted vide order dt. 31.3.92 & were not the junior most. Even if it is presumed that 3 vacancies meant for ST arose in the year 1992 after 31st March, such circumstance & situation would not make any difference to factual aspects as well as our findings as three carry forward vacancies from the year 1991 would have alone been sufficient to treat them as appointed on regular basis. We may further note the fact that it was not the respondents' plea that roster maintained by them show the ad-hoc & temporary vacancy or vacancies. On the other hand, law is settled that the roster indicates not only the regular vacancies but also that the regular appointment made against the roster points alone are plotted therein. When the respondents have shown the applicants & 4 other ST officials in the said roster for the year 1992, on what basis their appointment/promotion could be treated as only "ad-hoc" baffled us. On perusal of the Establishment Order No 259/95 dt. 13.12.1995, vide which as many as 37 officials were regularized, including two applicants herein & at least two more belonging to ST

community namely Ram Dayal Meena & Chander Bhan Meena vis a vis roster for the year 1995, we find that 4 vacancies for ST arose in the said year & all 4 vacancies were filled by promotion of 4 ST officials namely Petrus Kiro, Ganga Prasad, Rajesh Kumar Meena & Brih Bihari Shah, and as such the closing balance was "NIL". Not only this as many as 20 officials belonging to SC community were promoted in the year 1995, as revealed from the roster of the said year. Applicants name were not shown in the roster year 1995. If they were regularized only in the year 1995 vide Order dated 13.12.1995, their names ought to have figured in the roster maintained by the respondents for the said year.

14. As we have already noticed hereinabove, the Respondents have not disputed and controverted the specific averment made in grounds para 5.6 that they were promoted as Inspectors on ad hoc basis "by a duly constituted DPC as per rules and against regular vacancies meant for ST quota in promotion quota". The three and a half year period, when the DPC could not be held is from 31.03.1992 to 13.12.1995. We may also note that the reply dated 13th July 2004 submitted by the Respondents to the OA was signed by the same official, who had signed the reply filed before the National Commission for SC/ST dt. 16.7.2004. In the reply filed before this Tribunal, the Respondents have not stated that in Delhi Commissionerate, DPCs were held for promotion to the grade of Inspector computing total number of vacancies in a year (financial year) including ad hoc vacancies on account of Cost Recovery posts and other short term vacancies and promotions were affected on ad hoc basis, which had been the stand taken before the said Commission. We note with concern that the averments made before the National Commission for SC/ST and this Tribunal are at variance on numerous account. Before National Commission, the stand taken was the vacancies are calculated based on financial year, while from the records produced before us, we find that the vacancies were taken on calendar basis. Similarly, there is no averment made about the Cost Recovery posts in the reply filed before this Tribunal. Thirdly, if the applicants were regularized against the vacancies of the year 1995, then why and how their names did not figure in the roster maintained for the said year. We do not find any reasons & justification in the contentions raised by the respondents, including that of limitation. We may note that the



Hon'ble Supreme Court has time & again observed that the State should not raise the hyper technical plea of limitation as routine, yet the respondents pay little heed to all this.

15. Thus, in the light of the discussion made hereinabove and on analysis of facts, we are of the considered view that the promotions ordered vide order dated 31.3.1992 was not an "ad-hoc" but a regular promotion & the order dated 13.12.1995 has no relevance. There are no reasons & justification to treat the said promotions as "ad-hoc", particularly in the circumstances explained herein-above. Accordingly, we hold that the applicants are entitled to their seniority based on regular promotion w.e.f. 1.5.1992 and 10.04.1992 respectively and their seniority should accordingly be revised. Consequently, the applicants are also declared eligible for promotion to the post of Superintendent in the year 2002. Since they were not considered by the DPC held for the said purpose in July 2002, the Respondents are directed to convene review DPC and consider them for such promotion and if they are recommended for such promotion, they should be promoted as Superintendent with effect from the date their juniors were so promoted with all consequential benefits like fixation of pay, arrears and seniority.

16. We note with concern that senior functionary in the Govt. of India has misled this Tribunal taking two distinct and different stands on the same issue.

17. Normally in such circumstances, we would have directed Respondent No.1 to conduct a detailed enquiry into this matter and submit report to us, but keeping in view the fact that the promotions were made in the year 1992 and many officials responsible for the events of the said year or immediately thereafter, in the meantime, would have retired/transferred/promoted etc., & therefore it would be somewhat difficult to fasten individual responsibility on the officials responsible for such state of affairs. In this backdrop, we are of the view that this a fit case where exemplary costs should be imposed upon the respondents as they have not only unnecessarily driven the applicants to litigation even the plea raised by them is contrary to records. Therefore, we find that ends of justice would be met by imposing exemplary costs on the Respondents to the tune of Rs.10,000/- per applicant. In the given circumstances, imposition of exemplary costs would act as a deterrent factor to raise frivolous plea in future. We are fortified in taking

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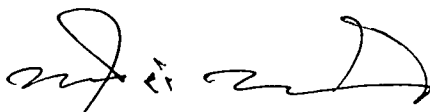
the aforesaid view from law laid down by the Hon'ble Supreme Court in 2005 (6) SCC

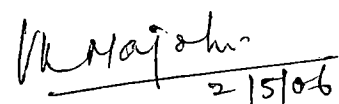
344 Salem Advocate Bar Assn. Vs. Union of India, wherein it has been observed that:

"37. Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In a large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defences. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35 (2) provides for cost to follow the event, it is implicit that the costs have to be those, which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons therefor. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow." (emphasis supplied)

Accordingly, OA is allowed in terms of observations made hereinabove.

Necessary exercise shall be completed at the earliest & in any event within a period of three months from the date of communication of this order.


(Mukesh Kumar Gupta)
Member (J)


(V.K. Majotra)
Vice Chairman(A)