NO Reversion

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 197/87 & 427/87
~~T.A. No.~~

DATE OF DECISION 09.09.1992

P.L. Thomas & Ors. Petitioner s

Mr. S.V. Raju, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman,

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

O.A.No. 197/87

P.L. Thomas,
Technical Assistant,
Telecom Wing,
Customs House,
Ahmedabad. ..... Applicant.

(Advocate: Mr.S.V. Raju)

Versus.

1. Union of India(Notice to be served on the Collector of Customs (Preventive) Ahmedabad Collectorate, Customs House, Navrangpura, Ahmedabad.

2. C. Kumaran Unni,
Technical Assistant.

3. S.A. Rathe,
Technical Assistant. .... Respondents.

(Advocate:Mr.Akil Kureshi)

O.A.No. 427/87

1. K.Balakrishnan,
Supervisor,
Telecom,
Customs (Wing)
Ahmedabad.

2. E. Jaykumar
Supervisor (Communications)
C/o. Customs Div. Office,
Vijaybhuvan,
D.K.V. Road,
Jamnagar.

3. K.R. Dave,
Supervisor (Communications)
C/o, Customs Div. Office,
Vijaybhuvan,
D.K.V. Road,
Jamnagar.

4. K. Chandran,
Technical Assistant,
Customs Div.
Bhuj. .... Applicants.

(Advocate: Mr. S.V. Raju)

Versus.

1. Union of India(Notice to be served on the Collector of Customs (Preventive) Ahmedabad, Collectorate, Customs House, Navrangpura, Ahmedabad.

2. Collector of Customs &
Central Excise,
Shri B.K. Bakshi, having
address as Centre Point Bldg.,
Nr. City Guest House, Rajkot.

3. E.K.S. Kurup
Customs Division
Porbandar.

4. M.V. Nair,
Customs Division
Bhuj.

5. Sudhakaran,
Customs Division,
Bhuj.

6. Dhrub Singh
Customs Collectorate,
Ahmedabad.

7. K.M. Shergar,
Customs Division,
Jamnagar.

8. Somappa Biradar,
Customs Division,
Bhavnagar.

9. H. Mallikarjuna,
Customs Division,
Bhavnagar.

10. N.A. Varghese,
Customs Division
Bulsar.

11. Surender Singh
Customs Division,
Surat.

12. A.K. Anand,
Customs Division,
Surat.

13. M. Edward Raj,
Customs Division,
Porbandar. ..... Respondents.

(Advocate:Mr.Akil Kureshi)

COMMON JUDGMENT

O.A.No. 197/87
AND
O.A.No. 427/87

Date: 09.09.1992

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr.S.V. Raju, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondent No. 1 in O.A.197/87. None present for respondent No. 2 & 3.

2. Heard Mr. S.V. Raju, learned advocate for the applicants. Mr. Akil Kureshi, learned advocate for respondent No. 1 & 2 in O.A. 427/87. None present for respondents No. 3 to 15.

3. These two applications are disposed of by a common judgment by consent of learned advocates for the parties.

4. O.A.No. 197/87 is filed by the applicant, a technical assistant, serving at Telecom Wing Ahmedabad, seeking the relief that the impugned order at Annexure B i.e. Est.Order No. 02/1986 dated 6th January, 1986 passed by the Collector of Customs(Preventive) Gujarat Ahmedabad and Estt.Order No. 83/85 dated 31st December, 1985 passed by the Directorate of Preventive Operation New Delhi, reverting the applicant from the post of Technical Assistant to the post of Radio Technician in the Customs (Preventive) Collectorate. The case of the applicant in O.A. 197/87 is that he was appointed as Radio Technician on 16th January, 1978 in the Telecom Wing of the Central Excise and Customs at

Ahmedabad and then he was promoted to the next higher post of Technical Assistant by order dated 16th April, 1981 produced at Annexure A Estt.Order No. 97/81 in which his name was at Sr.No. 1. The applicant was serving as Radio Technician at Madurai Collectorate before he was promoted to the post of Technical Assistant. The applicant then joined duty as Technical Assistant at Ahmedabad on 4th June, 1981 in purusance of his promotion order and since then he has been working as Technical Assistant at Ahmedabad. It is alleged by the applicant that the post of Technical Assistant is one of such postswhich is covered by the recruitment rules known as "Directorate of Communications (Customs and Central Excise Group 'C' (Technicians) Posts Recruitment Rules 1978". It is alleged by the applicant that he had qualified and passed in the departmental gradation test in the month of June 1980 and thereafter he was selected and promoted to the post of Technical Assistant by the order at Annexure A and though in the said order of promotion a word "adhoc" is used in fact and in reality and in substance, the appointment of the applicant was against clear vacancy and the respondent was not justified in appointing the applicant on ad hoc basis.

5. It is alleged by the applicant that the respondents then issued Est .Order No. 2/86 Annexure B dated 6th January, 1986 reverting him to the post of Radio Technician. He has challenged this reversion order on the grounds that though he is fully qualified to be appointed to the post of Senior Technical Assistant, he is reverted back to the post of Radio Technician with a view to accommodate those persons who have passed the test subsequently to the post of Technical Assistant which would amount to violation of provisions of Article 14 & 16 of the Constitution of India, that though initial appointment is termed as ad hoc, in reality and substance, it was against clear vacancy and hence the date for consideration for passing departmental promotion test is 16th April, 1981 and not 1985 or 1986. It is further alleged that the persons who have now been appointed as Technical Assistants were not qualified on that date and the juniors who have qualified now are being appointed as Technical Assistant superseding him which action is bad in law. The applicant also challenges the order of reversion on the ground that the seniority is to be reckoned not from the date of joining to the post of Radio Technician, but from the date of passing the departmental test, because that is the criteria

for being promoted to the post of Technical Assistant, that those who have cleared the departmental promotion test subsequently to the post of Technical Assistant cannot be appointed contrary to the provision of the Recruitment Rules superseeding the applicant. In the alternative, it is alleged that even assuming that the applicant's appointment was initially on adhoc basis in the year 1981, then also once the post was regularised in 1985-86, those persons would be regularised who have worked for 5 years and not those who have no experience or those who had not qualified at the initial time. It is further alleged by the applicant that the respondents are estopped on account of principles of promissory estoppel from reverting the applicant to the post of Radio Technician after the applicant has put in almost five years of service as Technical Assistant The case of the applicant is that when the application No. 31/85 along with other applications came up for hearing before this Tribunal on 18th March, 1986, the understanding was reached between the applicant and the respondent that if the applicant withdrew his application, he would be continued on ad hoc basis on the promoted post of Technical Assistant and that the applicant withdrew the said application on this assurance and

(13)

understanding on the part of the respondents. It is alleged that, thereafter, the applicant made representation on 27th March, 1986 to the Directorate of Preventive Operations, Customs and Central Excise, New Delhi and reminder was also sent on 26th June, 1986 but no reply was given to the same, that thereafter a letter dated 28th March, 1986 was also addressed to the Directorate of Preventive Operations, New Delhi which was followed by the registered notice dated 20th October, 1986 through the advocate, but no reply is given and hence this application.

6. The four applicants of O.A. 427/87 have filed this joint application seeking the relief that the impugned order at Annexure A-2 i.e., Est . Order No. 02/86 dated 6th January, 1986 passed by the Collector of Customs (Preventive) Gujarat, Ahmedabad and Est. Order No. 83/85 dated 31st December, 1986 passed by the Directorate of Preventive Operations, New Delhi reverting the applicants from the post of Supervisor/Technical Assistants to the post of Radio Technician/Operator in the Customs (Preventive) Collectorate be quashed and set aside. The applicant No.1 was appointed as Operator on 20th October, 1976 in the Telecommunication Wing of the Central Excise & Customs Department and then was promoted

as Suprevisor by the order dated 16th April, 1981 being Estt. Order No. 98/81 produced at Ann. A in pursuance of which he joined as Supervisor in Ahmedabad Collectorate on 20th June, 1981 and since that date he is working as Supervisor at Ahmedabad, but then the Applicant No. 1 was reverted to the post of Operator, Telecommunication Wing in pursuance to the impugned order. The applicant no. 2 & 3 were also appointed as Operators on 1st March, 1977 and 30th July, 1977 respectively in the Telecommunication Wing of Central Excise and Customs and thereafter they were promoted to the next higher post of Supervisor by order Annexure A in pursuance of which they joined duty as Supervisors in 1981 and since then they were continuously working as Supervisor, but then they were reverted to the post of Operator in pursuance of the impugned order. The applicant No. 4 was appointed as Radio Technican on 8th April, 1976 in the Telecommunication Wing of Central Excise & Customs at Jamnagar and then he was promoted to the post of Technical Assistant by order Ann.A-1 dated 23rd March, 1981 bearing Estt.Order No.9/81 and then he joined duty as Technical Assistant from 2nd May, 1981 and has been working as Technical Assistant but then he was reverted to the post of Radio Technican in the Telecommunica-

tion Wing in pursuance of the impugned order. These applicants have challenged their reversion order on almost the same grounds on which the applicant of O.A. 197/87 has challenged his reversion order namely that they had qualified and passed in the departmental gradation test in the month of June 1980 and then they were selected and promoted to the post of Supervisors/Technical Assistant by order Ann. A & A-1 respectively and though in the said order of promotion the word ad hoc is used but in fact and in reality they were appointed against clear vacancy. It is also alleged that the order of reversion Annexure A-2 dated 6th January, 1986 reverting the applicants is bad on the grounds which are almost identical to the grounds mentioned by the applicant in O.A. 197/87.

7. The respondent No.1 in O.A. 197/87 has filed reply and the respondent no. 1 & 2 have filed reply in O.A. 427/87. These respondents have taken almost identical contentions in their respective reply. The other respondents have not filed any reply.

8. The respondents have contended in their respective reply that these applications are premature. It is contended that recruitment rules were notified

in the year 1978 and it was found that there were as much as 214 persons did not satisfy the recruitment rules and their cases were taken up with the Ministry and Department of Personnel and cases of 193 persons were cleared. It is contended that as per notified recruitment rules except for the initial level post, entry to all the higher post were to be made 100% by promotion failing which by transfer and failing which by direct entry recruitment, but there is no provisio either in recruitment rules or in the principles of seniority that the persons who have passed the promotion test earlier could be senior to those who have passed promotion test later and the promotion did not bestow seniority on passing it. It is alleged that the applicant of the O.A.197/87 Radio Technician was appointed on ad hoc basis and as he passed promotion test in the year 1980 and since he was available for promotion on ad hoc basis, he was promoted as Technical Assistant under Establishment Order No. 9/81 dated 23rd March, 1981 which is produced by the respondents but since the seniority list of Telecommunication Staff had not been finalised by them and also ad hoc appointment in the initial cadre had not been regularised, appointment was made on ad hoc basis. It is contended that the services of this

applicant was also regularised as Radio Technician on 19th January, 1982 under Estt. Order No. 127/82. So far the applicants of O.A. 427/87 are concerned, they were appointed as Operator Telecom on ad hoc basis and since they passed promotion test in the year 1980 consequently they were promoted on ad hoc basis. It is contended that the service of applicant no. 1 was regularised as Operator Telecom on 5th January, 1982 under Estt. Order No. 007/82 and he remained adhoc as Supervisor. It is contended that the applicant no.2, Operator, Telecom was appointed on ad hoc basis and the services of applicant No.2 were regularised as Operator Telecom on 16th Janaury, 1982. The services of applicant No. 3 were regularised as Operator Telecom on 15th January, 1982 and the services of applicant No. 4 were also regularised on 15th January, 1982. It is contended that after the names of all those who did not satisfy the recruitment rules had been cleared and also general seniority arrived at as per the Government instructions under Notification dated 30th January, 1984, a final seniority list was circulated and the applicants did not raise any objections to the seniority list. It is contended that the general principles of seniority

for direct recruits are as under:

> "Subject to the provisions of para-4 below permanent officers of each grade shall be ranked senior to persons who are officiating in the grade".

The respondents have reproduced the rules in the reply.

9. It is contended by the respondents that the application No. 13, 14, 23 & 22 of 1986 filed by the applicants before this Tribunal were disposed of as withdrawn on 18th March, 1986 on the request of the applicants and the representations were also considered in the Ministry and the same were communicated to the Deputy Director, Customs Collectorate, Ahmedabad for suitable action in the matter.

10. It is contended by the respondents that the applicants' had to be reverted as their names did not appear in the respective approved panel as they were junior to those who were ordered to be promoted on regular basis by the D.P.C. They have denied that when the Application No. 13,14,23 & 22 of 1986 filed by applicants came up for hearing on 18th March, 1986 before the Tribunal, there was any understanding reached between them and the respondents' advocate as alleged in the application nor any assurance

or understanding was given by the respondents that they would be continued on ad hoc basis on the promoted post, if they withdrew their applications. It is contended that the order of the Tribunal dated 18th March, 1986 in the said applications is an unconditional order. Respondents have denied that the applicants were qualified to be promoted in the year 1980 itself and denied that they were later on reverted back to the respective post to accommodate those persons who had passed the test subsequently and they denied that there is any violation of provisions of Article 14 & 16 of the Constitution of India. It is contended that the seniority list was prepared in accordance with law and the applicants could not claim seniority over the persons senior to them who had not passed the departmental promotion test with them or after them. They have specifically denied the allegations mentioned by the applicants in their applications.

11. The learned advocate for the applicants submitted that the applicants of these applications feeling aggrieved by the impugned order of reversion had filed applications No. 13,14,22 & 23 & 31/86 before the Tribunal and when these

applications came up for hearing on 18th March, 1986, an understanding was reached between the applicants and the respondents that if the applicants withdrew their applications, then the applicants would be continued on ad hoc basis on the promoted post and hence the applicants withdrew the said applications on these assurance and understanding on the part of the respondents. The applicants have produced the order passed by the Tribunal on 18th March, 1986 at Annexure C in O.A. 197/87 and at Annexure A-3 in O.A.427/87. A common order in all those applications was passed by the Tribunal as under:

> "Mr.Raju for the applicants state that applicant wants to withdraw the applications at this stage. The application is accordingly disposed of as withdrawn."

The learned advocate for the respondents submitted that there was no assurance or understanding given to the applicants on 18th March, 1986 or at any time when they withdrew the said applications before the Tribunal and the respondents in their reply denied such allegations on the applicants. The order passed by the Tribunal if read as a whole would mean that the applicants had withdrawn the said applications unconditionally. Hence it is now not open for the applicants again to come before this

Tribunal challenging the same reversion orders by adopting second round of litigation. The order of the Tribunal does not reveal that the applicants were permitted to withdraw their respective applications with liberty to institute fresh application in respect of the subject matter of the said applications. Hence applicants are precluded from filing these applications in respect of the same cause of action. Therefore, the applications are liable to be dismissed on that ground alone.

12. Mr. Raju, learned advocate for the applicants further submitted that the applicants have already put in almost five years service as Supervisor/Technical Assistants and they having passed the departmental gradation test and departmental promotion test in the year 1980 were qualified to be promoted in the year 1980 itself and consequently they were promoted on 16th April, 1981. He submitted that the applicants have passed the gradation test for the next higher post i.e., Senior Technical Assistant in August 1983 and therefore they were fully qualified to be appointed to the post of Senior Technical Assistant and if at this stage the applicants are reverted back to the post of Radio Technician/ Operator with a view to accommodate those persons

who have passed the test subsequently to the post of Technical Assistant it would amount to the violation of provisions of Article 14 & 16 of the Constitution of India. He submitted that though the applicants' initial appointments were termed as ad hoc, the same was in reality and substance against clear vacancy and therefore the date for consideration for passing departmental promotion test was 16th April, 1981 and not 1985 or 1986. He submitted that the respondents who are joined as parties subsequently by the applicants have been appointed as Technical Assistant who were not qualified on the date on which the applicants had passed the departmental promotion test, and therefore, they were juniors to the applicants and they can not join as Technical Assistant superseeding the applicants. The respondents' learned advocate submitted that the applicant of O.A. 197/87 was appointed as Radio Technician on ad hoc basis and he passed the promotion test in the year 1980 and since he was available for promotion on ad hoc basis, he was promoted as Technical Assistant under Est .Order No. 9/81 dated 23rd March, 1981, a copy of which is produced by the respondents at Annexure A and the order of appointment clearly stated that the promotion as Technical Assistant on ad hoc basis will not give any claim for regular appointment to the post of Technical Assistant and since the seniority list of Telecom Staff had not been finalised by then, and also the ad hoc appointment in the initial cadre had not been regularised, appointment was made on ad hoc basis. He submitted that the

services of the applicant was also regularised as Radio Technician on 19th January, 1982 under Estt. Order No. 127/82. He submitted that the applicant remained ad hoc as Technical Assistant and after the names of all those who did not satisfy the conditions of recruitment rules had been cleared and also general seniority arrived at as per the Government instructions under Notification dated 30th January, 1984, a final seniority list was circulated in which the name of applicant appeared at Sr.No. 86 in the list of Radio Technician, that the applicant did not raise any objection on the seniority list and he did not challenge the said list. He also submitted that after the seniority list had been finalised by the D.P.C. on 19th December, 1985 and there were eligible senior persons in this list and D.P.C. after due consideration, found them fit for regular promotion. The name of the applicant who was promoted on ad hoc basis did not appear in the approved panel of D.P.C, therefore, there was no choice but to revert the applicant to his original rank. He submitted that the contention of the applicant that he by having passed the promotion test, became senior to those who had not passed this test is untenable.

13. So far the applicants of O.A. 427/87 are

concerned, the learned advocate for the respondents submitted that the applicant No. 1, 2 and 3 were appointed as Operator Telecom on ad hoc basis and their services were regularised as Operator Telecom in 1982. The respondents have produced the orders regarding the regularisation of this applicants as Operator Telecom. He also submitted that the applicants remained ad hoc as Supervisors and after the names of all those who did not satisfy the recruitment rules had been cleared and also general seniority arrived at as per the Government instructions dated 30th January, 1984, a final seniority list was circulated in which the seniority of applicant No.1 was shown at Sr.No. 236 in the list of Operator (Telecom) and that of one Dhruv Singh appeared at Sr. No. 89 but the applicant did not raised any objection on the seniority list and he did not challenge the seniority list. He submitted that the applicant No. 2 & 3 were also regularised as Operator Telecom in 1982 and they also did not raise any objection on the seniority list in which the name of applicant No.2 was shown at Sr.No. 295 and that of Applicant No.3 at Sr.No. 373 and they did not challenge this list. He submitted that so far applicant No.4 is

concerned, he was appointed as Radio Technician on ad hoc basis and he was also promoted on ad hoc basis to the rank of Technical Assistant vi de order dated 23rd March, 1981. He submitted that the seniority list of Telecom Staff had not been finalised by them and also the ad hoc appointment in the initial cadre had not been regularised and the appointment was made on ad hoc basis and the promotion was ad hoc termed as Radio Technician. The services of applicant No. 4 was also regularised in 1982 and he remained ad hoc as Technical Assistant and after the names of all those who did not satisfy to recruitment rules had been cleared and also general seniority arrived at as per Government instruction dated 30th January, 1984, a final seniority list was circulated in which the name of applicant No.4 appeared at Sr.No. 45 in the list of Radio Technician and he did not raise any objection in the seniority list and did not challenge it. The respondents have produced the documentary evidence on this point. He submitted that after the seniority list had been finalised by the D.P.C. called on 19th December, 1985 and there were eligible senior persons in this list and DPC after due consideration found them fit for regular

promotion, the names of the applicants who were promoted on ad hoc basis did not appear in the approved panel of D.P.C. and hence they were reverted in their original rank.

13.A. We have heard learned advocates at length, we find no substance in the arguments of the learned advocate for the applicants that the applicants appointment though termed as ad hoc in reality and in substance it was against clear vacancy and hence the respondents were not justified in appointing them on ad hoc basis and we do not find any substance in his submissions that the respondents who have been selected by D.P.C. should be considered as junior to the applicants and the order of reversion of the applicants was in violation of provisions of Article 14 & 16 of the Constitution of India. We accept the submissions of the learned advocate of the respondents 1 and 2. We do no agree with submissions of the applicants that the seniority should be reckoned not from the date of joining to the post of Radio Technician but from the date of passing the departmental test. We also do not agree with him that the respondents were estopped on account of principles of promissory estoppel from reverting the applicants. We hold that merely because the applicants remained on ad hoc post

for five years, it could not be said that there was promissory estoppel against the respondents as alleged by the applicants. There is much substance in the submission of the learned advocate for the respondents that the appointments of the applicants on ad hoc basis were made as a seniority of Telecommunication Staff was not finalised and further there were certain Group C Telecom staff who were not meeting the provision of the recruitment rules and grant of exemption for regularisation of their initial ad hoc appointment as Operator/Radio Technician was under consideration of Ministry. Only on clearance by the Ministry, the initial appointment of Group'C' telecom staff were regularised in January 1982. He submitted that the seniority list prepared is totally in accordance with law and the applicants could not secure a seniority over those who had not passed the promotion test with them only on the ground that the applicants passed that test earlier. He submitted that there is no provision either in the recruitment rules or in the criteria laid down in the principles of seniority under which the applicants are claiming seniority on the basis of having qualified departmental test in the year 1980. The learned advocate for the respondents submitted that the representation sent

and the reminders of the applicants were duly considered by the respondents. Thus the claim of the applicants that they having passed promotion test earlier should be considered as senior to those who have passed promotion test later can not be accepted. We agree with the submissions of the learned advocate for the respondents that as the applicants had not challenged the final seniority list of Operator/ Radio Technician in which their names were shown they cannot now challenge the decision of the DPC which called on 19th December, 1985 which considered all the eligible senior persons in this list and after due consideration found them fit for regular promotion. The names of the applicants who were promoted on ad hoc basis did not appear in the approved panel of DPC. Under these circumstances, the applicants were reverted to their original rank.

14. Having considered all the submissions made by the learned advocates and considering all the grounds taken in the applications, we find no substance in the case of the applicants and we do not find any illegality in the impugned order passed against them by which they are reverted from the post of Technical Assistant/Supervisors to the post of Radio Technician/Operator in the

Customs (Preventive) Collectorate. The result is that both the applications deserve to be dismissed.

ORDER

O.A.No. 197/87 and O.A.No. 427/87 are dismissed with no order as to costs.

(R.C.Bhatt)
Member(J)

9.9.92
(N.V.Krishnan)
Vice Chairman

vtc.

MA. 286 of 1992 in OA/197/87.

Date	Office Report	ORDER
7-10-92 17		None for thea applicant. Shri Akil Kureshi for therespondent. Applicant has filed M.A. 286/1992 in O.A 197/87 It isp pointed out that said O.A. along with O?A .427 Of 87 stands disposed of by our judgement dated 9-9-92. Under these circumstance M.A. doesnot servive and is dismissed. (R.C.Bhatt) Member (J) (N.V.Krishnan) Vice Chairman *AS.

MA/302/88
in
OA/197/87

Coram : Hon'ble Mr. P. H. Trivedi : Vice Chairman

Hon'ble Mr. P. M. Joshi : Judicial Member

10-5-1988

Heard learned advocates Mr. S. V. Raju for the applicant and Mr. J. D. Ajmera for the respondents. The case may be put up for final hearing on 01-08-1988. With this order, M.A. stands disposed of.

(P. H. Trivedi)
Vice Chairman

(P. M. Joshi)
Judicial Member

Shah/-