

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A NO. 497 OF 1998

Cuttack, this the day of March, 2004

Sri Sarojkanta Sarangi

30th

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 77

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 77

Mohanty
(M.R.MOHANTY)
MEMBER(JUDICIAL)

Ans
(B.N.SOM)
VICE-CHAIRMAN

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 497 OF 1998

Cuttack, this the 30th day of March, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

Sri Sarojkanta Sarangi, aged about 36 years, son of Sri Kalandi Charan Sarangi, now working as Inspector of Central Excise & Customs, Kalunga-I Range, Kalunga, District Sundargarh Applicant

Advocate for the applicant

M/s A.Rath &
D.P.Dhalsamant

Vrs.

1. Union of India, represented through the Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi 110 001.
2. Commissioner, Central Excise & Customs, Bhubaneswar-I Commissionerate, Rajaswa Vihar, Bhubaneswar 751 004, Dist.Khurda.
3. Commissioner, Central Excise & Customs, Bhubaneswar II Commissionerate, Rajaswa Vihar, Bhubaneswar 751004, District Khurda.
4. Sri Udaynath Das, Inspector of Central Excise & Customs, C/o Commissioner, Central Excise & Customs, Bhubaneswar, Rajaswa Vihar, Bhubaneswar 751 004.
5. Smt.Fatima Kandir, Inspector of Central Excise & Customs, Bhubaneswar, C/o the Commissioner, Central Excise & Customs, Rajaswa Vihar, Bhubaneswar 751 004, District Khurda
6. Shri Larentus Bhatra, Central Excise & Customs, C/o Commissioner, Central Excise & Customs, Rajaswa Vihar, Bhubaneswar 751 004, District Khurda.
7. Smt.Sarala Naik, Inspector of Central Excise & Customs, C/o Commissioner, Central Excise & Customs, Rajaswa Vihar, Bhubaneswar 751004, District Khurda.
8. Sri Manabniranath Hazra, Inspector of Central Excise & Customs, Rajaswa Vihar, Bhubaneswar 751 004, District Khurda.

9. Shri Bhimsen Majhi, Inspector of Central Excise & Customs, C/o Commissioner, Central Excise & Customs, Rajaswa Vihar, Bhubaneshwar 751004, District Khurda

..... Respondents

Advocate for the Respondents - Mr.U.B.Mohapatra, ASC
For Respondents 1 to 3
.....

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Sarojkanta Sarangi, now working as Inspector of Central Excise & Customs, has filed this Original Application ventilating his grievance to the effect that whereas officials junior to him have been regularised in the cadre of Inspector of Central Excise & Customs, he has not been given the same benefit.

2. The facts of the case, in short, are that the applicant, who was recruited in the cadre of Stenographer Grade III, was selected and appointed as Inspector of Central Excise & Customs on ad hoc basis with effect from 31.10.1991. For this selection, he had to undergo interview and physical test. However, Respondent nos.4 to 9, who were appointed as Inspector of Central Excise & Customs on ad hoc basis subsequent to the applicant, have already been appointed on regular basis in the cadre of Inspector of Central Excise & Customs. The applicant has filed a statement at Annexure 1 showing that Respondent Nos.4 and 5 were appointed as Inspector of Central Excise & Customs on regular basis with effect from 11.4.1994, Respondent Nos. 6 and 7 with effect from 30.4.1997, and Respondent Nos. 8 and 9 with effect from 17.8.1998, but the applicant is still continuing on ad hoc basis. It is the case



of the applicant that he has been overlooked for regular appointment to the cadre of Inspector of Central Excise & Customs because of the fallacious appointment letter issued with respect to his promotion on ad hoc basis, dated 30.10.1991 (Annexure 2) and the order of his promotion to Stenographer Grade II dated 1.4.1993 (Annexure 3). He has submitted that although by order dated 1.4.1993 (Annexure 3) he was promoted as Stenographer Grade II and his services were utilized in the Divisional Office as Stenographer Grade II (Rs.1400-2300) from 1993 to 1997, he continued to enjoy the benefit of pay scale of Inspector of Central Excise & Customs (Rs.1640-2900/-). However, he was ^{later on} not posted as Inspector of Central Excise & Customs in Kalunga-I Range with effect from 7.7.1997. He had submitted representations to the authorities to grant him regular promotion to the grade of Inspector of Central Excise & Customs either from 31.10.1991 or from 11.4.1994 when Respondent No.4 was regularly promoted, but he received no response to his representations. He has, therefore, approached this Tribunal with a prayer to direct Respondent Nos. 2 and 3 to regularise his service in the grade of Inspector of Central Excise & Customs with effect from 31.10.1991 and to fix his seniority and grant other service benefits.

3. The departmental Respondents, who have filed a detailed counter, while admitting the facts of the case, have opposed the claim of the applicant that he deserves to be regularised from 11.4.1994 when Respondent No.4 was granted regular promotion or his case for promotion to the Inspector of Central Excise & Customs on regular basis ^{or} should have been considered when

the cases of Respondent Nos. 4 to 9 were considered. They have pointed out that according to the Recruitment Rules for the post of Inspector of Central Excise & Customs, 25% quota is available to be filled up on promotion basis from among the three feeder grades, namely, Stenographer Grade III, Tax Assistant and Upper Division Clerk. For the purpose of promotion, a common eligibility list is prepared out of the officials belonging to the three feeder grades stated earlier and selection for promotion is made out of that common eligibility list by creating a zone of consideration according to the Government instructions laid down in this regard. It has also been averred that the combined eligibility list for promotion to the grade of Inspector of Central Excise & Customs is prepared with reference to continuous length of service in the grade of Upper Division Clerk, Stenographer Grade III and Tax Assistant subject to the condition that the inter se seniority of the officials in the same grade is not disturbed. While this is the procedure for granting regular promotion to the grade of Inspector, the Respondent-Department has created another establishment for cost recovery purpose where posts of Inspector of Central Excise in the pay scale of Rs.1640-2900/- have also been created and these posts being for short term basis, i.e., the tenure of these posts being for limited period of time, these posts are filled up on deputation basis. This has been clearly spelt out in their order dated 30.10.1991 (Annexure 2) where it is stated that the applicant was being promoted to the grade of Inspector purely on ad hoc basis against the cost recovery post/deputation vacancy in the time scale of pay of Rs.1640-2900/-, the

3

meaning being that the cost recovery post against which the applicant was promoted was a deputation vacancy. The departmental Respondents in their counter have stated that by issuing another order dated 7.12.1982, Government of India, Ministry of Finance, Department of Revenue, had notified that as the cost recovery posts would remain operative so long as the user party would continue to deposit the cost and would cease to exist from the date the party fails to deposit the cost, appointment to the posts should be made on ad hoc basis. They have further submitted that at the time of granting him ad hoc promotion to the grade of Inspector on 30.10.1991, he was given terms and conditions of appointment which included a condition that the period of service put in the grade of Inspector on ad hoc basis will not count for seniority, confirmation and qualifying service for further promotion. For the reasons stated above, the departmental Respondents have submitted that the applicant cannot claim any advantage of service especially with regard to regular promotion to the grade of Inspector because of his fortuitous service as cost recovery Inspector. It is also strongly submitted by the departmental Respondents that Respondent Nos. 4 to 9 got promotion to the regular cadre of Inspector by virtue of their fulfilling the conditions of service as contained in the Recruitment Rules and by virtue of the fact that they were senior to the applicant in the feeder cadre and fulfilled other requisite conditions for promotion.

4. Respondent Nos. 4 to 9, though noticed, neither appeared nor filed

 counter.

5. We have carefully considered the submissions made by the rival parties. The applicant has made two-fold claims; firstly, that his service on ad hoc basis as cost recovery Inspector should be regularised, and, secondly, that by order dated 1.4.1993 (Annexure 3) although he was granted promotion to Stenographer Grade II (Rs.1400-2300) he was asked to work as Inspector and therefore, he should be considered for regularisation in the grade of Inspector.

6. From a close examination of the issues involved, we find that the grievance of the applicant has arisen because of the lack of clarity in notifying the ^{vacancy} of cost recovery Inspector. It is clear from the history of creation of the post of cost recovery Inspector that this category of post has been created outside the regular cadre post of Inspector, for which the Recruitment Rules exist, i.e., Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979, as amended from time to time. As stated earlier, the cost recovery posts are created at the request of the user party who pays for the cost of the post and accordingly the posts cease to exist from the date the party fails to deposit the cost. This being the position, the Government rightly held that these posts cannot be treated as regular sanctioned strength of an organisation and as such it held that the procedure prescribed to fill up regular sanctioned posts cannot be applied here. Unfortunately, however, instead of notifying the post in such clear-cut terms, the departmental Respondents, while implementing the order, have used terms which are not in conformity with each other and have, therefore, created the present

misunderstanding. We would invite a reference to the wordings of the order dated 30.10.1991 (Annexure 2) which reads as follows:

"The undernoted U.D.Clerk/Stenographer of this Collectorate are hereby promoted to the grade of Inspector purely on Ad hoc basis against Cost Recovery post/Deputation vacancies in the time scale of pay of Rs.1640-60-2600-EB-75-2900/- plus other usual allowances as admissible under rules with effect from the date of their joining in the grade of Inspector and until further orders." (Emphasis supplied)

The words/phrases which have created contradiction have been emphasized in the quotation given above. When the posts are in ex cadre establishment and the mode of recruitment/appointment is on deputation basis, the departmental Respondents should not have used the word either 'promotion' or 'ad hoc' nor should they have used the term 'joining in the grade of Inspector'. It should be noted that recruitment/appointment to a post may be made either by following the method of deputation, transfer (on permanent basis) from one grade to another, or promotion. Thus deputation and promotion being two distinct methods of recruitment/appointment, these words could not have been used in the same order, as has been done by the departmental Respondents in their order dated 30.10.1991 (Annexure 2). Further, the word 'ad hoc' cannot be used in the case of an appointment on deputation, because deputation is a regular method of recruitment/appointment. Thus, the terminology 'ad hoc' is used only to describe the arrangement/appointment made to a higher post without following the method of appointment as prescribed in the Recruitment Rules. In the instant case, as the cost recovery posts are all ex cadre posts, these could be filled only by way of deputation and to this extent the instruction issued by

the Central Board of Excise & Customs vide their letter dated 4.11.1991 (Annexure R/6) that "the posts are to be filled up by promotion on ad hoc basis" was misleading and therefore, should be quashed. We order accordingly. The appointment letter, therefore, should have been issued in the following format:

"The undernoted UDC/Stenographers of this Collectorate are hereby appointed on deputation basis to the post of cost Recovery Inspector in the time of scale of pay of Rs.1640-60-2600-EB-75-2900/- plus other usual allowances as admissible under rules with effect from the date of their joining the post and until further orders".

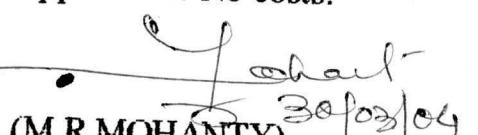
If the appointment order would have been issued in the format given above, there would have been hardly any scope of misunderstanding the nature of appointment ^{leading to} litigation. The terms and conditions as noted in that order, i.e., Annexure 2 should not also contain the condition given at para 3 in view of what has been stated in the Government order (Annexure R/IV) that the posts cease to exist from the date the party fails to deposit the cost. Instead, condition in paragraph 3 should be that the appointment is made for 'x' period which may be terminated earlier also in the exigencies of service. We have also come across quite a few cases claiming grant of seniority on 'promotion' to the grade of Inspector counting the period they worked as Cost Recovery Officers. We would, therefore, call upon the departmental Respondents to take note of our observations and carry out necessary changes in the format of letter of appointment to the post of Cost Recovery Officers

and also in matter of advertisement of the posts. A copy of this order should be sent to Respondent No.1 by Respondent No.2 for further corrective action in the matter of setting terms and conditions of appointment in the *ex cadre* post and revising the instructions about filling up of the posts.

7. With regard to the grievance of the applicant that after his appointment on deputation basis as Inspector in the pay scale of Rs.1640-2900/- the departmental Respondents issued his order of promotion from Stenographer Grade III to Stenographer Grade II in the pay scale of Rs.1400-2300/- and that they utilised his service as Stenographer Grade II but paid him the salary of the Inspector's grade. The departmental Respondents in the counter have replied to say that his continuance as ad hoc Inspector even after 6.4.1993 was allowed erroneously and that the Department seeks to review the situation and take necessary steps to rectify the error. We are unable to see any reason in the reply given by the Respondents. What is to be recognised by the departmental Respondents is that when a person is sent on deputation from his substantive post, his rights are always given protection in the substantive grade/cadre and therefore, when his turn for promotion comes in the cadre not only he is considered for promotion, once his name is included in the select panel, he is entitled to proforma promotion. As soon as his next junior is given promotion, he also gets the benefit of promotion by grant of proforma promotion certificate under Next Below Rule (NBR). In the circumstances, the departmental Respondents should not have issued his promotion order in Stenographer Grade II in 1993, the way they have done.

but should have prepared a panel of three officials against two vacancies in the grade of Stenographer II on the ground that the applicant is away on deputation and thereafter issued proforma promotion order under the Next Below Rule to protect his interest in the parent cadre. We are surprised that this golden rule, Next Below Rule, was not only overlooked by the departmental Respondents, even while filing the counter they did not see the mistake that had been committed in this case. We, therefore, order that the Respondents should take action for issue of proforma promotion order under the Next Below Rule in respect of the applicant and that is how they should rectify the error and not by recovering any amount from the applicant.

8. With the above observation and direction, we dispose of this Original Application. No costs.


(M.R.MOHANTY)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

AN/PS