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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 625-629/02
Cuttack this the 09th day of Sept' 2004

U.S.Mishra & Ors. ... Applicants

- VERSUS -

Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not ? Yes

29/09/04
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Subha
(B.N. SARKAR)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 625-629/02
Cuttack this the 02nd day of Sept' 2004

CORAM:

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

1. Uma Sankar Mishra, S/o. Shri Kisher Chandra Mishra, aged about 36 years, presently working as Inspector of Central Excise and Customs, O/o. the Commissioner, Central Excise and Customs, Bhubaneswar-II Commissionerate, C.R.Building, Rajaswa Vihar, Bhubaneswar-751004
2. Subhendu Mohanty, S/o. Shri Pramod Kumar Mohanty, aged about 34 years, presently working as Inspector of Central Excise and Customs, O/o the Commissioner Central Excise and Customs, Bhubaneswar-I Commissionerate, C.R.Building, Rajaswa Vihar, Bhubaneswar-751004
3. Pradipta Kumar Subudhiray, S/o. late Pramod Chandra Subudhiray, aged about 36 years, presently working as Inspector of Central Excise and Customs, O/o. the Commissioner, Central Excise and Customs, Bhubaneswar-II Commissionerate, C.R.Building, Rajaswa Vihar, Bhubaneswar-751004
4. Asis Kumar Panda, S/o. Sri Sarat Chandra Panda, aged about 34 years, presently working as Inspector of Central Excise and Customs, O/o the Commissioner Central Excise and Customs, Bhubaneswar-I Commissionerate, C.R.Building, Rajaswa Vihar, Bhubaneswar-751004
5. Rabinarayan Mahapatra, S/o. Shri Baidyanath Mahapatra, aged 34 years, presently working as Inspector of Central Excise and Customs, O/o. the Commissioner, Central Excise and Customs, Bhubaneswar-II Commissionerate, C.R.Building, Rajaswa Vihar, Bhubaneswar-751004

Applicants

By the Advocates

M/s. A.K. Mishra
J. Sengupta
D.K. Panda
P.R.J. Dash
G. Sinha

- VERSUS -

1. Union of India represented by its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001

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2. The Chairman, Central Board of Excise & Customs,
North Block, New Delhi-110001

... Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.

O R D E R

MR. B.N. SQM, VICE-CHAIRMAN: Shri Uma Sankar Mishra and four others have filed this Original Application assailing the discriminatory attitude of the Respondents in formulating and approving the cadre restructuring proposal, specially with regard to creation of Customs(Preventive) Formation in Orissa and ignoring the genuine promotional facilities to the detriment to the interest of the applicants. They have, therefore, sought for the following reliefs:

- a) To set aside the impugned order dated 5.6.2002 (Annexure-1 and notification dated 7.3.2002 (Annexure-2);
- b) To issue order for restoration of order at Annexure-14;
- c) To issue order for creation of a Customs Preventive Commissionerate in Orissa; and
- d) To direct the Respondents for sanctioning of required number of Superintendent Posts to different Customs establishment of Orissa

The case of the applicants in a nut shell is that the Respondents-Department's proposal for cadre restructuring has not included the case for creation of Customs(Preventive) formation in Orissa, although there has been persistent demand from the staff side in this regard. This has resulted in serious stagnation among the officials serving in Orissa. To illustrate this point they have pointed out that whereas in Andhra Pradesh, an Inspectors who joined service during 1988 have been promoted to the grade of Superintendent, but in Orissa Inspectors of 1982 batch are still awaiting to get promotion

to the grade of Superintendent. They have submitted that the case for setting up of Customs(Preventive) Wing in Orissa has been recommended by the Director (O&MS) vide Annexure-A/3, and whereas such proposals have been implemented in respect of the States of Tamilnadu, Andhra Pradesh and West Bengal, but the said proposal in respect of Orissa has remained unattended to. When in November, 2001, Respondent No.2 issued orders regarding organisational changes consequent upon cadre restructuring for improving the promotional prospects along with enhancing organisational efficiency, no benefit was offered to the officials working in Orissa. On the other hand, posts were diverted from Cuttack to man certain functions at Paradeep Port. Although certain posts were sanctioned for strengthening anti-smuggling activities in Bhubaneswar(Central Excise Commissionerate) the number of staff sanctioned was inadequate for the task. The matter regarding creation of anti-smuggling work-force had been raised in the Parliament, but no tangible action has been taken by the Respondents. Under the circumstances, the applicants have approached this Tribunal seeking reliefs referred to above.

Respondents-Department have opposed the prayers of the applicants by filing a detailed counter-reply. They have submitted that the cadre restructuring proposal of the Respondents-Department was aimed at enhancing revenue productivity and to create officer oriented, technology driven and tax payer friendly taxation structure, down-sizing of the department by rationalizing various formations and higher motivation through

functional need based improved management of cadre prospects of the employees, but not to improve the promotional prospects of different cadres. The proposal of restructuring of the Department had the approval of the Cabinet itself and therefore, the overall objective of the cadre restructuring process should not be misunderstood. On the other hand, they have assailed the O.A. being handi work of certain officials in individual capacity, who are self-professing and do not represent the aspirations of the staff as a whole. They have also stated that creation of a field ^{formation/unit} is a policy matter and not a service matter, which can be challenged before the Tribunal by the interested individuals. The allegation of staff is based on functional need and the policy makers are free to plan and effect creation of its field formations and allocation of staff to such formations on the basis of functional need of the organisation. Promotion of individuals is a resultant by product and not the main objective of cadre restructuring. On the merit, the Respondents have stated that it is incorrect to say that the additional staff has not been sanctioned to attend to customs work. The fact of the matter is that the additional staff has been sanctioned for attending to customs work in Paradeep Port, Gopalpur and Bhubaneswar Air Cargo Complex under Bhubaneswar-I Central Excise Commissionerate. They have also rebutted that anti-smuggling work in Orissa has been withdrawn and that additional staff strength of 36 personnel has been provided to Bhubaneswar-I Central

Excise Commissionerate for attending to the work relating to customs, although this strength has not been shown separately in the Ministry's order. It has also been stated that against the existing strength of 108 in the Superintendent cadre, which is the next higher cadre for promotion of Inspectors of Central Excise, a strength of 164 has been allocated to Bhubaneswar Commissionerate with the increase of 52% in the strength of Superintendent cadre, which will benefit the feeder grade of Inspectors. Giving details of the actions taken to look after the need for growth of revenue in Orissa and better tax administration, the Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

We have heard the learned counsel of both the sides and perused the materials adduced before us.

The prayer of the applicants for direction to Respondents-Department to create Customs(Preventive) Wing on the recommendation of the Director (O&MS) and to increase the promotional venues of Inspectors at par with other Customs Inspectors in the country. The Respondents, have on the other hand, opposed this on the plea that creation of posts/cadre review is a policy and matter not being a service matter is not amenable to jurisdiction of the Tribunal. This position is fairly well settled that continuance or abolition or creation of posts is the exclusive prerogative of the employer and any decision in that regard is not available to be interfered with by the Court, unless it is held to

vitiated by mala fide or arbitrariness (J.T. 2002(3)

576. Their Lordships in the case of Commissioner,

Corporation of Madras vs. Madras Corporation Teachers,

Mandram, 1997 SCC(L&S) 723 had held as follows :

"It is well settled legal position that it is the legal or executive body of the Govt. to create a post or to prescribe the qualification for the post. The Court or Tribunal is devoid of power to give such direction".

It was further held by the Full Bench of this -Tribunal in the case of Eastern Railway Class-II Officers' Association and Ors. vs. Union of India & Ors. (decided on 2.12.1991) (reported in (1992) - 20 A. T. Cases (FB) 691 that "promotional avenue is a policy decision. They cannot be challenged unless change in policy is mala fide, arbitrary or bereft of any decision or principle.

Although the applicants have repeatedly submitted that their promotion prospects are less than their counterparts in other States, this position has been repudiated by the Respondents by showing that in the restructuring proposal, Orissa Central Excise Commissionerate had an increase of 52% in the post of Superintendent, which would go to show that the grievance is ill-founded. Lastly, we would like to quote from what this Tribunal (Ernakulam Bench) had held in O.A. No.334/94 in Thankamma John case based on the decision of the Hon'ble Supreme Court emanating in Civil Appeal No. 293/91 and 480/89, with regard to creation of posts/policy decision and the scope of judicial review, as under :

"... It is a policy matter involving financial burden. No Court or the Tribunal could compel the Government to change its policy involving expenditure".

Having regard to all these facts and circumstances of the case and having regard to the well prepeunded position of law on the subject, we are of the view that the applicants have not been able to make out any case of discrimination meted to them by the Respondents. Similarly, having not alleged or attributed mala fide or colourable exercise of powers nor having been able to prove violation of any statutory provision, we are constrained to hold that this is a cause of action which arises out of policy simpliciter and therefore, it does not warrant intervention of the Tribunal to issue directions as prayed for by the applicants or to substitute its view in place of the views taken by the competent authority. Thus we are of the considered view that right to sue does not accrue for the applicants. Accordingly, we dismiss this O.A. being devoid of merit. No costs.

S. Mohanty
(M.R.MOHANTY) 02/09/04
MEMBER (JUDICIAL)

BJY

R. N. S. Mohanty
(B.N. S. MOHANTY)
VICE-CHAIRMAN