

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

.....
DATE OF ORDER : 5.03.1999.

O.A.NO. 238/1998.

Ananda Ram Nagora S/o Shri Lal Chand Nagora, aged about 39 years working as Inspector, Central Excise, Division Chhitorgarh, R/o 228 Chankya Nagar, Lal Sagar Road, Mandore, Jodhpur.

.....APPLICANT

V E R S U S

1. Union of India through the Secretary, Department of Revenue, Ministry of Finance, New Delhi.
2. The Commissioner, Central Excise and Customs, N.C.R. Building, Jaipur.
3. The Additional Commissioner of Central Excise and Customs (Personnel and Vigilence) Cadre Control Unit, Division Central Excise Jaipur-I, N.C.R.B., Jaipur.
4. The Assistant Commissioner, Central Excise Division, Chittorgarh.

.....RESPONDENTS

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CORAM

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

.....
Mr. J.K.Kaushik, Counsel for the Applicant.

Mr. K.S.Nahar, Counsel for the Respondents.

legal brief

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(9)

PER HON'BLE MR. GOPAL SINGH :

Applicant Ananda Ram Nagora, has filed this Application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 26.8.1998 at Annex.A/1 reverting the applicant from the post of Inspector to the post of Tax Assistant and for a direction to the respondents to allow the applicant to work on the post of Inspector.

2. Applicant's case is that while he was working as U.D.C. in the respondent department, the applicant was promoted to the post of Inspector and has been holding that post since 9.7.1998. The respondents have vide Annex.A/1 issued orders for reversion of the applicant from the post of Inspector to the post of Tax Assistant. Having failed to redress his grievances at the hands of the respondents, the applicant has filed this O.A.

3. Notices were issued to the respondents and they have filed their reply. In their reply, the respondents have submitted that in terms of Government of India, Department of Personnel and Training O.M. dated 2.7.1997, recruitment is to be made on post based rosters. It has also been asserted by the respondents that the applicant was promoted as Inspector on the basis of vacancy based roster and since the post based roster was to be effective from 2.7.1997, the selection made earlier were reviewed by the D.P.C. and the applicant's

Gopal Singh

name did not find place in the panel in terms of post based roster.

4. We have heard the learned counsel for the parties and perused the record of the case.

5. It may be mentioned that besides issuing other instructions regarding maintenance of post based rosters the Government of India in their O.M. dated 2.7.1997 also mentioned as under :-

"The Court further held that the vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentages of reservation. Thereafter, the rosters cannot operate and vacancies released by retirement, resignation, promotion etc. of the persons belonging to the general and the reserved categories are to be filled by appointment of persons from the respective category so that the prescribed percentage of reservation is maintained."

It is clear from the above that the post based rosters are to be given effect-to only after the representation of persons belonging to reserved categories in a cadre reached the prescribed percentage of reservation. It is not the case of the respondent that the/percentage of reservation stood achieved before resorting to the present promotion in question. We thus do not find any reason in terms of O.M. dated 2.7.1997 of reviewing promotions already made. Further, the Government of India, Department of Posts, letter dated 20.5.1998 printed at page 293 of Swamy's Manual of Establishment and Administration have

Copy of Swamy

issued following clarifications :-

"Whether the vacancies for which the following action to complete recruitment has already been taken be filled up if :

- vacancy has already been declared,
- examinations conducted

The orders contained in OM, dated 2.7.1997 take effect from the date of issue. Where selections have been finalized/announced, they need not be disturbed. As long as the select list of candidates has not been finalized action, as indicated in the OM, be taken to fill up vacancies".

In the light of the above clarification also, no review was called for.

6. In the light of the above discussion, we find much merit in the Application and the same deserves to be allowed.

7. The Original Application is accordingly allowed with the observation that (i) respondents order dated 26th August, 1998 (Annexure A/1), is set aside and (ii) the applicant would continue to hold the post of Inspector treating Annexure A/1 as nonest.

8. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)

Member (A)

5/3/98
(A.K. MISRA)
Member (J)

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Rec'd
8/3/19
R (Copy)
on 8/2
P.M.

Part II and III destroyed
in my presence on 2/2/19
under the supervision of
Section Officer () as per
Order dated 1.6.19

Section Officer (Record)