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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,
JODHPUR**

O.A. No.294/2005

Decided on : 27th April, 2007

CORAM:

HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN
HON'BLE MR. R.R.BHANDARI, ADMINISTRATIVE MEMBER

Mam Chand Singh S/o Sh. Raj Singh ji, aged about 37 years, R/o House No.34, Purohit Mohalla, Pokharan, District Jaisalmer (Rajasthan) presently working on the post of Inspector in the office of Superintendent, Customs Range Pokharan, District Jaisalmer (Rajasthan).

.....Applicant

Versus

1. Union of India through the Secretary, Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, North Block, New Delhi-110001.
2. Additional Commissioner (P&V), Office of Commissioner, Central Excise, Jaipur-1, New Delhi Central Revenue Building, Statue Circle, C-Scheme, Jaipur, (Rajasthan).
3. Assistant Commissioner, Customs Division, Jaisalmer (Rajasthan).

.....Respondents

Present : Mr.S.K.Malik with Mr.Daya Ram, Advocates for applicants.
Mr.Mahendra Godara Advocate for
Mr.Vineet Mathur, Advocate for respondents.

ORDER

JUSTICE M. RAMACHANDRAN, V.C

The service history of the applicant is as follows. After a competitive examination he had been appointed as UDC in the ^{Custom} (Income Tax) Department on 19.5.1994. He got promotion as Tax Assistant/ Senior Tax Assistant w.e.f. 28.9.1998. On 15.6.2001, he had been promoted as (Income Tax) Inspector on adhoc basis vide orders dated 15.6.2001. A copy of the order is Annexure A-2. It is claimed that on 28.12.2001 he had passed the qualifying examination. With reference to the seniority list dated 6.1.2005 of Income Tax Inspectors, his position is shown at Sr. No.394 as

adhoc Inspector. Annexure A-5, seniority list of Senior Tax Assistants as on 31.12.2004, shows his position at Item No.3.

2. While so continuing, he submits that Annexure A-1, order was served on 30.9.2005. He had been thereby informed that he is reverted from the grade of ad hoc Inspector to that of Senior Tax Assistant. The reason given is that he had not been selected for adhoc promotion / re-promotion by the DPC which was held on 30.9.2005. The DPC apparently was held to review the adhoc promotions of candidates who had completed more than 1 year in the grade of Inspector, to make fresh adhoc promotion to the grade.

3. In view of the interim orders passed by this Tribunal, the applicant is continuing in the post of Inspector without suffering reversion. The reversion order is under challenge and according to the applicant, the impugned order suffers from serious irregularities and is in violation of fundamental rights. According to him there was no procedure contemplated whereby adhoc promotees were to suffer reversion after review. Even if such procedure was available to be employed before ordering reversion, his explanation ought to have been ascertained and recorded. The action, according to him is pre meditated because DPC is alleged to have been held on 30.9.2005 and on the same very date the impugned order is issued. It is further submitted that excepting him, all other candidates who had been given adhoc promotion in the year 2001, were permitted to continue.

4. It appears that the adhoc promotions were in respect of "cost recovery post" but when the promotional order was issued to

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the applicant, there was no selection process involving Departmental Promotion Committee. Evidently the candidates were not qualified and they had been given time to acquire such qualifications. Order also indicates that they could have opted for reversion within a period of three years. There was also a rider that on abolition of posts of Inspectors appointed on Cost Recovery Basis or on any other reason, the department reserved right to revert the Ad hoc Inspectors to their original posts of Tax Assistant / Stenographer Gr. II. The adhoc promotions by itself did not carry any weightage or any right of seniority or right to regularization on the post.

5. The contention of the applicant is that orders issued by the Government as O.M.No.11012/9/86-Estt. . Dated 24.12.1986 issued by G.I.,D.P.T (as published in Swamy's - Establishment and Administration), had not been borne in mind by the respondents. The above memorandum prescribes procedure to be followed when disciplinary proceeding is initiated against a government servant officiating in a higher post on adhoc basis. It is prescribed that where appointment is made on adhoc basis purely for administrative reasons against a short term vacancy or a leave vacancy presumably for a period of less than one year, if disciplinary proceedings are initiated, it may be possible to revert him. However, where appointment was required to be made on adhoc basis for administrative reasons and if the government servant had held the appointment for more than one year, in the contingency of any disciplinary proceedings, he was not to be reverted only on the ground of disciplinary proceedings initiated against him. According to the applicant, had he been given notice, relevant orders would have been brought to the attention of the

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respondents and these proceedings could have been avoided.

6. The answer of the respondents is that impact of the office memorandum dated 14.9.1992, a copy of which is Annexure R-8, has altered the position. The DPC is expected to assess suitability of the government servant, if the disciplinary case / criminal prosecution against the government servant is not concluded even after the expiry of two years from the date of meeting of the first DPC, which kept its findings in sealed cover. In such situation, the appointing authority may review the case of the government servants, provided he is not under suspension and consider the desirability of giving him Ad hoc promotion taking note of the circumstances, whether the promotion will be against public interest and whether charges are so grave so as to warrant continued denial of promotion. Thus, the plea is that the earlier O.M. Stands modified because of impact of the later government decision.

7. However, for two reasons it may not be possible to accept this submission at its face. Firstly there is no reference to the Office Memorandum of 24.12.1986 in the later office Memorandum. We have also to notice that the earlier O.M specifically referred to certain contingencies whereas only general guidelines were issued in the later government orders. Secondly it is not a case where the applicant was promoted on adhoc basis after clearance by a DPC. The appointment was in exigency of services and considering the position of the seniority of the persons in the feeder category. Further nothing was brought to our notice to indicate that there was a conscious decision or authority for re-assessing as to whether officer was entitled to hold on to the post by a review in a case where the promotion was not on clearance by DPC.

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8. Of course it is submitted on behalf of the respondents that a criminal case has been registered against the applicant and the departmental proceedings are also in progress. Therefore, public interest also requires that he should not discharge the duties of Inspector. Argument appears to be unconvincing. If charges were serious enough, it would have been possible for the respondents to suspend him from the service. That is not the case here. The allegations related to the period 2004 and respondents have waited for almost years and time gap is not explained. The cumulative circumstances, therefore, are in favour of the applicant.

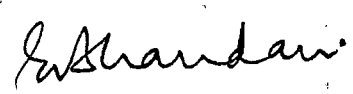
9. It is conceded that to ascertain the suitability of the officer for regular promotion sealed cover procedure has been initiated. It is not made clear as to whether the procedure was for conferment of regular promotion or adhoc promotion. We feel that although normal clearance procedure could not be necessary for adhoc promotion, perhaps the respondents will be entitled to contend that in the matter of adhoc promotions in respect of posts which are operated on cost recovery basis, a selection process might have to be followed. Annexure R-3, issued on 4.11.1991 generally provide that while filling up of cost recovery post in Group C, Executive Cadre on adhoc promotion, the procedure outlined for regular promotion as laid down in letter dated 9.5.1991 may be followed. But we find that while making promotion on adhoc basis, especially in such type of cases, this may not have been workable as role of DPC could have been contemplated in such situations when the incumbents were unqualified at the time of consideration. Therefore, we direct that the order, Annexure A-1, reverting the applicant should be kept under suspension, as there is no legal

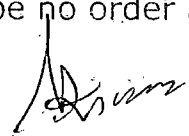
backing forthcoming or explained.

10. If as a matter of fact the DPC had considered him for selection to a regular post, now that sealed cover procedure has been adopted the departmental proceedings initiated against the applicant could be expedited. The criminal proceedings need not be taken note of, for taking necessary steps as presently contemplated. If the applicant is exonerated, the sealed cover in respect of the applicant may be opened and he will be entitled to the benefits, if available, as per the decision of the DPC.

11. In any case it may be possible for the department to take notice of the final verdict of the departmental proceedings, for appropriately dealing with the case of the applicant. Till such exercise is not complete, we feel that the applicant is entitled to hold on to the position, obtained by him because of the order of promotion dated 8.9.2001 (Annexure A-2). The application is, therefore, allowed to this extent.

12. We make it clear that nothing contained in this order will preclude the department from dealing with the case of the applicant appropriately as the disciplinary authority deems fit to adopt as such questions are kept at large. There will be no order as to costs.


(R.R.BHANDARI)
Administrative Member


(JUSTICE M.RAMACHANDRAN)
Vice Chairman

HC*

RIC
on 1/5/07
[Signature]

Part II and III destroyed
in my presence on 3-6-14
under the supervision of
section officer [] as per
order dated 26-3-14.

[Signature]

Section officer (Record)

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