

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.131/2013
with MA No.176/2013

Jodhpur, this the 19th day of November, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Suresh Chandra Maich s/o Sh. Narayan Prasad, aged about 43 years, resident of Type III/54, Customs Colony, Jodhpur, at present working as Superintendent Group-B in the office of Deputy Commissioner, ICD, The Thar Dry Port, Pal Road, Jodhpur.

.....Applicant

Mr. Mahesh Joshi and Mr. Nitin Trivedi, Counsel for applicant

Vs.

1. Union of India through Commissioner (CCU), NCRB, Statue Circle, C-Scheme, Jaipur
2. Additional Commissioner (CCU), Office of the Chief Commissioner, Central Excise (J.Z.), Jaipur NCRB, Statue Circle, C-Scheme, Jaipur

...Respondents

Mr. Vinit Mathur and Mr. Ankur Mathur, Counsel for respondents

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

By way of filing the present OA the applicant has challenged the order dated 1.4.2013 (Ann.A/1) whereby the applicant has been reverted from the post of Superintendent Group-B to the post of Inspector.

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2. The brief facts of the case, as averred by the applicant, are that the applicant was initially appointed as Inspector, Customs in the respondent department vide order dated 8.2.1993 and thereafter promoted on ad-hoc basis to the post of Superintendent Group-B in the pay band of Rs. 9300-34800 with grade pay of Rs. 4800 vide order dated 1.12.2011. It has been averred that the applicant was promoted as Superintendent Group-B on the recommendation of the DPC and, therefore, although the applicant was promoted on ad hoc basis, but it was actually on regular basis. The applicant has further averred that Shri Rakesh Kumar against whom ACB trial was pending is promoted on regular basis to the post of Superintendent Group-B after passing the order of acquittal and consequent upon promotion of Shri Rakesh Kumar, the applicant is reverted back to the post of Inspector as no vacancy is available.

The action of the respondents has been challenged by the applicant mainly on the ground that once the order of promotion, although on ad-hoc basis, on the recommendations of the DPC has been made, then the applicant has every right to work on the promoted post and the order reverting the applicant is stigmatic and in gross violation of the principles of natural justice. The case of promotion of the applicant was considered by the regular DPC and he was promoted on the basis of his ACRs being excellent and since the impugned order entails civil consequences, therefore, the same could have been passed only after regular disciplinary inquiry. Therefore, aggrieved by the order of reversion, the applicant has filed this OA seeking the following reliefs:-

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(a) By an appropriate order or direction, the impugned order dated 01.04. 2013 (Annex. A/1) may kindly be quashed and set aside and accordingly, the respondents may kindly be (sic) from reverting the petitioner from the post of Superintendent Group-B post to the post of Inspector.

(b) Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of applicant.

(c) The cost of the Original Application may kindly be awarded in favour of the applicant.

3. The respondents by way of filing reply while denying the right of the applicant submitted that promotion of the applicant to the post of Superintendent Group-B was made on ad-hoc basis for filling up the two vacancies on the basis of seniority-cum-fitness. As per OM dated 30.3.1988, the total period for which the appointments/promotions are made on ad-hoc basis is limited to one year only and ad-hoc promotions are made on the basis of seniority-cum-fitness, even where the promotions are made by selection method as is the case with regard to this post. It is further submitted that six Inspectors belonging to SC category including the applicant were considered by the DPC dated 1.12.1011 for ad-hoc promotion to the grade of Superintendent Group-B for filling the two vacancies on the basis of seniority-cum-fitness. The findings in respect of Shri Rakesh Kumar and Prabhu Dayal Beniwal, who were senior to the applicant, were kept in a sealed covered by the said DPC for promotion to the grade of Superintendent Group-B. It has been further stated that Shri Rakesh Kumar (SC) Inspector was exonerated from the charges and the disciplinary proceedings were dropped by the competent authority,

therefore, the sealed cover prepared by the DPC for regular promotion to the grade of Superintendent Group-B was opened on 31.3.2013 and as per the findings contained in sealed cover, Shri Rakesh Kumar, Inspector, who was senior to the applicant has been promoted on regular basis w.e.f. 15.10.2007, which is the date when his immediate junior Shri Y.K.Kaushik (SC) was promoted as Superintendent Group-B on regular basis. In view of above, it is averred that firstly promotion of the applicant was on ad-hoc basis and from the promotion order itself, it was clear that the said promotion was for a period of one year and the applicant could have been reverted back to the post of Inspector without even giving prior notice and secondly as Shri Rakesh Kumar who is senior to the applicant was promoted on regular basis w.e.f. 15.10.2007 and the applicant being junior most was supposed to be reverted back so that Shri Rakesh Kumar is promoted, therefore, the OA filed by the applicant is devoid of merit and the same deserves to be dismissed.

4. The applicant has filed rejoinder to the reply filed by the applicant reiterating the facts averred in the OA and the respondents have filed additional affidavit in support of reply.

5. Heard both the parties. Counsel for the applicant contended that in spite of 5 vacancies at ICDs/TDP (Customs) the applicant has been reverted back to the post of Inspector (Customs) and he has challenged the legality of that order on the ground that when he was promoted by the prescribed process of screening and the ACRs for

five years were considered, yet he has been reverted back considering the total posts of Superintendent (Customs) Group-B as 278 whereas 5 posts of Superintendent (Customs) have not been considered while reverting the applicant.

6. Per contra, counsel for respondents vehemently contended that there are only 278 posts of Superintendent (Customs) on which the persons are already working and the applicant was the last person who was working on ad-hoc basis on the post of Superintendent (Customs) and on the promotion of Shri Rakesh Kumar, the applicant was reverted back to the post of Inspector. Promoting a person on ad-hoc basis does not create any right in favour of that person to be retained on the post and consequent upon promotion of Shri Rakesh Kumar, the applicant has been rightly reverted. Counsel for the respondents further contended that the respondent-department have not got the sanction from Government of India for the ICDs/TDP posts because these posts have been sanctioned on cost recovery basis and costs have not been recovered from the concerned custodians.

7. Counsel for the applicant today submitted a document which contains reference of Establishment Order No. 10/2013 dated 05.04.2013 issued by the Additional Commissioner (P&V) Customs, Jaipur in which ICD, TDP, Jodhpur; ICD, Concor, Jodhpur and ICD, Rajsico, Jodhpur are posts against which Superintendents have been posted and as per the said order Shri Harish Kothari has been allotted work in ICS, Concor, Jodhpur; Shri Subhash Chandra Sharma in ICD,

TDP, Jodhpur; Shri K.P.Goswami in ICD, Concor, Jodhpur; Shri K.C.Vyas in ICD, Concor, Jodhpur; Shri P.C.Samaria in N.C. Cell+ICD, TDP, Jodhpur; Shri Bahadur Singh in Law+ICD, TDP, Jodhpur and Shri Y.K.Gupta in P&I, Customs, Jodhpur and additional charge of ICD, Rajsico. Thus, in view of this order, it cannot be said that these posts have been abolished, rather these are working posts.

8. The counsel for the respondents strongly denied the contention of the counsel for the applicant that posts created on cost recovery basis are filled up by persons promoted on ad-hoc basis and referred to communication dated 29th July, 1999 (Ann.R/13), which are guidelines/instructions regarding creation and continuation of posts of Customs Officer/Executive Officers on cost recovery basis, which nowhere provide that only ad-hoc persons are to be appointed against such posts. He further stated that as per letter 01.09.2011 (Ann.R/14) no sanction regarding continuation of posts on cost recovery basis for the year 2011-2012 has been received from the Ministry for the 5 posts of ICD, Rajsico, Jodhpur/Bhilwara/Bhiwadi/ICD, TDP Jodhpur.

9. We have considered the rival contentions and perused the record.

10. It is settled principle of law that persons promoted on ad-hoc basis/ad-hoc posts have got no right to continue on that post, but in the present case, the reply filed by the respondent-department and the office order dated 18.4.2013 show name of some persons who are

working as Superintendent Group-B (Customs) in ICD, TDP, Jodhpur; ICD, Concor, Jodhpur and ICD, Rajsico, Jodhpur i.e. S/Shri P.C.Samaria, K.C.Vyas, K.P. Goswami, Bahadur Dingh, Subash Chandra Sharma, Y.K.Gupta and Harish Kothari, therefore, this Tribunal is not in a position to sit on the factual aspects whether the vacancy exists or not, specially because there appears to be discrepancy and contradictions regarding the number of posts sanctioned and number of posts on which employees are working and whether the total strength of Superintendent (Customs) is 278 or 283 or any other number. Therefore, looking to the entire facts and circumstances of the case, we are proposing to dispose of this application with certain directions.

11. Accordingly, the OA is disposed of with direction that the applicant may file a detailed representation to the respondents in respect of the existence of vacancies over and above 278 for the post of Superintendent (Customs) within 3 weeks from the date of receipt of this order. Thereafter, respondent-department shall consider that if there is any vacancy of Superintendent (Customs), then applicant shall be retained on the post of Superintendent (Customs) and in case of non-existence of any vacancy, the applicant shall be reverted. The respondent-department shall conclude this exercise within 3 months from the date of receipt of representation from the applicant and till disposal of the representation of the applicant, he shall not be reverted from the post of Superintendent (Customs) Group-B.

12. Misc. Application No. 176/2013 filed by the applicant is also disposed of in terms of above order.

13. There shall be no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

R/SS

