

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~No.

46/92

199

DATE OF DECISION 17.2.92

T.O . Padmakshan Applicant (s)

Shri V.Rajendran Advocate for the Applicant (s)

Versus

Collector of Customs, Custom House, Respondent (s)
Cochin-9.

Mr.N.N.Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 6.1.1992 the applicant has sought the following three reliefs:-

- i) to issue an order setting aside the order of the 1st respondent reverting the applicant from the post of Preventive Officer.
- ii) to declare that the applicant is entitled to be promoted as Preventive Officer with effect from 27.10.1987.
- iii) to issue a direction to the 1st respondent to consider and dispose of Annexure-IV and V representations in accordance with law and within a time limit to be specified by this Honourable Tribunal.

2. During the course of the arguments the learned counsel for the applicant stated that he does not wish to press reliefs No. 2 and 3 as the applicant had moved another application in O.A. 84/92 and this application may be disposed of on the 1st relief alone. The brief facts of the case are as follows.

3. The applicant has been working as L.D.C. under the Collector of Customs Cochin with effect from 29.7.1975 and was promoted as U.D.C. on 1.9.1981. On completion of five years of service he became eligible for promotion as Preventive Officer. His grievance is that his juniors were promoted as Preventive Officer on an ad-hoc basis on 27.10.1987 ignoring his claim. He satisfied all physical standards though he was physically handicapped. His representation

at Annexure-II was forwarded to the Ministry of Finance. According to the applicant, the Ministry directed that he should be promoted but his promotion was delayed on the plea of seeking further clarification and his juniors were promoted until by Office Order No.69/90 dated 11.4.90 the applicant was also promoted as Preventive Officer on an ad-hoc basis vide Annexure-III. By then eleven U.D.Cs junior to the applicant had been promoted. His claim for promotion with effect from the date his immediate junior was promoted, was not considered. Accordingly he made a further representation and fixation of his seniority in the grade of Preventive Officer. This and his further representations and reminders did not evoke any response. In the meantime the first respondent directed en masse reversion of Preventive Officers in excess of promotion quota and the applicant also is likely to be affected thereby. He apprehends that the order of reversion will be served on him on 6.1.92 when the application itself has been filed.

4. In the counter affidavit the respondents have referred to the judgment of this Tribunal dated 30.8.1991 in O.A.791/90 and O.A. 800/90 as the basis for issuing the order of reversion dated 4.1.92 (Annexure R1(b)) of the applicant and six other ad-hoc Preventive Officers.

5. Since the applicant is pressing only for the first relief in this application, we heard the learned counsel for both the parties on this relief alone regarding his reversion from the post of Preventive Officer vide the reversion order dated 4.1.92 at Annexure R1(b). This order of reversion was challenged by seven other UDCs/Stenos in O.A. 24 to 30 of 1992 who were also reverted by that order along with the applicant before us. After detailed analysis in our judgment dated 21.1.92 we found that our own judgment dated 30.8.91 in O.A.791/90 and O.A.800/90 was misinterpreted by the respondents in presuming that the applicants as ad-hoc Preventive Officers in excess of the promotion quota, should be reverted. We also found that reverting the ad-hoc Preventive Officers while there was a gaping hiatus between the number of posts of Preventive Officers

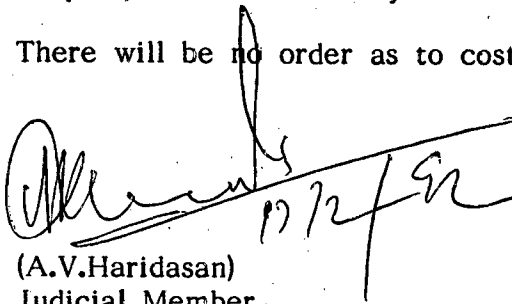
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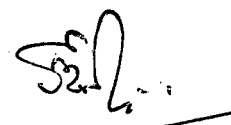
sanctioned (145) and the number of officers available (105) including the applicants, the reversion of the applicants vide the impugned order was also not in public interest and ^{was} suffering from malice in law. Our direction in our judgment dated 21.1.92 was as follows:-

" 8. In the conspectus of facts and circumstances we set aside the impugned order at Annexure R1(b) dated 4.1.92 as also the impugned order dated 17th December 1991 at Annexure-I as contrary to the directions of this Tribunal in O.A. 791/80 and O.A. 800/90 and not in conformity with public interest and suffering from malice in law. The respondents are directed to restore the applicants to their original assignment as ad-hoc Preventive Officers as if the impugned orders have not been passed. The reversion of ad-hoc promotee officers shall be effected only if there is absence of vacancies by the induction of direct recruits or abolition of posts, as the case may be or otherwise, only in accordance with law."

The review application and the miscellaneous petition for suspending operation of the above order have also been rejected.

6. Since by our judgment dated 21.1.91 in O.A. 24 to 30 of 1992 the order of reversion dated 4.1.92 at Annexure R1(b) has been set ^{in toto,} aside, ^{in part} we allow this application/and direct the respondents to restore the applicant to his original assignment as ad-hoc Preventive Officer as if the impugned order dated 4.1.92 has not been passed. The reversion of the applicant as ad-hoc promotee shall be effected only if there is absence of vacancy by the induction of direct recruits or abolition of post, as the case may be or otherwise, only in accordance with law. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman
17.2.92