

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 484/04

Dated Monday this the 28th day of June, 2004.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

1. The Kerala Central Excise and Customs Executive Officers Association, Cochin, represented by its President, Netticadan Antonio, Inspector of Central Excise, Cochin.
2. Netticadan Antonio, Inspector of Central Excise Central Excise Headquarters, Cochin.
3. K.P.Prakash Inspector of Central Excise Central Excise Headquarters Kozhikode.

Applicants

(By advocate Mr.S.Radhakrishnan)

Versus

1. Union of India represented by The Secretary, Ministry of Finance Department of Revenue, New Delhi.
2. The Chairman, Central Board of Excise and Customs, New Delhi.
3. Chief Commissioner of Customs, Bangalore Zone, Bangalore.
4. The Commissioner of Customs Customs House, Cochin.
5. The Chief Commissioner of Central Excise Kerala Zone, C.R.Building I.S.Press Road, Cochin.
6. The Commissioner of Central Excise, Central Revenue Building, * I.S Press Road, Cochin.
7. V.N.Lakshmikutty, Superintendent of Customs Customs House, Cochin.
8. Bijumon K.S. Superintendent of Customs, Customs House, Cochin.
9. Vijayan Pillai Superintendent of Customs Customs House, Cochin.

10. Gomathy G
Superintendent of Customs
Customs House, Cochin.
11. Joyce Mathew C.M.
Superintendent of Customs
Customs House, Cochin.
12. Vijay Kumar M
Superintendent of Customs
Customs House, Cochin.
13. Sareen Joseph,
Superintendent of Customs
Customs House, Cochin.
14. Sajib Hussain,
Superintendent of Customs
Customs House, Cochin.
15. Koshy Abraham,
Superintendent of Customs
Customs House, Cochin.
16. Naushad A,
Superintendent of Customs
Customs House, Cochin.
17. Suja C.T.,
Superintendent of Customs
Customs House, Cochin.
18. Sudheer Babu S.N.
Superintendent of Customs
Customs House, Cochin.
19. R.Latha
Superintendent of Customs
Customs House, Cochin.
20. T.O.Padmakshan,
Superintendent of Customs
Customs House, Cochin. Respondents.

(By advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 28th June, 2004 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The Kerala Central Excise & Customs Executive Officers' Association, Kochi, represented by its President and two Inspectors of Central Excise have filed this application challenging the legality and correctness of A-7 order dated 22.10.03 by which respondents 7 to 20 have been promoted as

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Superintendents of Customs on adhoc basis as also A-10 order of the second respondent dated 25th November 03 by which the representation submitted by the first applicant's Association has been disposed of accepting the recommendations made by the Chief Commissioner of Customs, Bangalore for allocating 10 posts of Superintendents to Customs and 14 posts to Central Excise out of 24 posts which were found in excess in Commissionerate of Customs (Preventive). Shorn of details the material allegations in the application absolutely necessary for consideration of the application at this stage can be stated as follows:

2. Recruitments to the post of Preventive Officer in Customs and Inspector in Central Excise are made on the basis of combined examination. Those who opt for Central Excise are posted as Inspectors and those who opt for Customs are posted as Preventive Officers. As a matter of career progression in the Central Excise Department, Inspectors after 8 years of service would become eligible for being considered for promotion as Superintendents and Preventive Officers in the Customs after a lapse of 8 years become eligible for being considered for promotion as Superintendents. After 5 years of service, Superintendents in both the wings become eligible to be considered for promotion as Assistant Commissioners in Central Excise and Customs and at that stage as Assistant Commissioners they converge into one service. The grievance of the applicants is that after the cadre restructuring when additional posts were created and distributed in the year 2001 since lesser numbers of posts of Superintendents were allocated to Central Excise Wing in comparison to the Customs Wing, the Central Excise Inspectors were at a considerable disadvantage while persons who were



qualified to be promoted as Superintendents in the year 1985 are yet to be promoted while in Customs Wing, those who were appointed in 1994 ^{as} / Preventive Officers have been promoted as Superintendents. Highlighting this alleged anomaly and praying for reliefs of reconsideration of the allotment of the post of Superintendents, the applicants filed OA 712/02. This OA was disposed of by a Division Bench of the Tribunal in which one of us [V.C.(J)] was a party by judgement dated 16.6.03 with the following directions:

- (a) "Applicants shall make a detailed representation regarding their grievance, which has been projected in the OA to the Chief Commissioner of Central Excise, Cochin within a period of two weeks.
- (b) The Chief Commissioner of Central Excise, Cochin as also the Chief Commissioner of Customs, Bangalore Zone will hold deliberations and examine whether there is any discrepancy in the allocation of the posts or any matter that requires a review of the allocation and submit their report to Central Board of Excise and Customs within a period of three months from the date of representation.
- (c) On receipt of above report from the Chief Commissioner of Central Excise, Cochin and Chief Commissioner of Customs, Bangalore, the Chairman, Central Board of Excise and Customs shall consider the same and issue appropriate orders on the claim of the applicants in the light of the report and all other relevant facts within a period of two months thereafter.

3. The representation submitted by the first applicant's association was considered in the manner prescribed in the judgement of the Tribunal and the 2nd respondent passed A-10 order allocating 14 from among the 24 posts of Superintendents found in excess in the Commissionerate of Customs (Preventive) to the Central Excise retaining 10 posts in Customs. The applicants are aggrieved that this allocation is not comparable to the workload or requirement and is, therefore, arbitrary. The promotion made by A-7 order of respondents 7 to 20 was earlier assailed by the applicants in OA 880/03 in which there was an

interim order that the above promotion would be subject to the decision of the Board on the representation submitted by the applicants in OA 712/02. However, OA 880/03 has since been withdrawn with liberty to challenge the order separately. Therefore, the applicants have filed this application jointly seeking to set aside A-7 & A-10.

4. We have carefully perused the application and also other materials placed on record and have heard Sri S.Radhakrishnan, the learned counsel of the applicants and Sri C.Rajendran, SCGSC who appeared taking notice on behalf of the official respondents. Sri S.Radhakirhsnan took us through the averments in the application which would show how persons who were appointed as Inspectors in Central Excise were at a disadvantage in career advancement in comparison to their counterpart who fortunately opted for service in the customs wing. The distribution of posts of Superintendents additionally created was not in accordance with the requirement or taking into account the disadvantage of the Inspectors of Central Excise, argued the learned counsel. The promotion of respondents 7 to 20 while the question of re-allocation of posts of Superintendents was at large before the second respondent - Board - was ~~inappropriate~~ and unsustainable, argued the learned counsel.

5. Learned SCGSC who appeared on behalf of the respondents argued that the challenge against A-7 would not stand because officers of the Central Excise Cadre which is a totally different Cadre has no right to challenge the promotions made in the Customs Cadre. The interim order in OA 880/03 was only regarding vacancies which were yet to be filled and, therefore, by virtue

of the order A-10 the applicants do not get a right to challenge A-7 order, argued the learned counsel. Regarding A-10 order, learned SCSSC argued that in obedience to the directions of the Tribunal in OA 712/02, the second respondent reconsidered the entire issue in the light of the recommendations made by the two Chief Commissioners of the Central Excise as also the Customs and decided to allocate 14 posts of Superintendents to the Central Excise allowing the Customs Department to retain 10 posts taking into account the exigencies of service and all relevant factors and this being a policy decision taken at the level of the Central Board of Excise & Customs, the Tribunal may not interfere with it.

6. Carefully considering the entire facts and circumstances in the light of the facts and the legal position emerging from the impugned orders, the averments in the application as also the submissions of the learned counsel, we find ourselves in absolute agreement with what is argued by the learned SCGSC. A-7 is the order promoting 14 Preventive Officers of the Customs Department on adhoc basis as Superintendents of Customs. The applicants who are members of the first applicant Association who do not belong to the Customs Department but are Inspectors of Central Excise have no locus standi to challenge the promotion of Preventive Officers of Customs as Superintendents of Customs. Merely because Superintendents of Central Excise as also Customs if promoted would come to a combined cadre of Assistant Commissioners, the Inspectores of Central Excise have no right to challenge the promotions in Customs Cadre. In one cadre on account of expansion etc. promotions at times may materialise sooner than the other cadre. That is an accident in service. Hence challenge against Annexure A-7 is *prima facie untenable*.

7. Coming to the legality, propriety and correctness of A-10 order, we have to state that creation of post, distribution, cadre restructuring etc. are to be made by the concerned Ministry or Department taking into account the requirements of service and not merely for the purpose of providing promotional avenues to employees. In this case, finding that the Inspectors of Central Excise had some grievances of disadvantage in the matter of promotion while considering OA 122/02 filed on their behalf, the Tribunal permitted the Association to make a detailed representation and directed the second respondent to take an appropriate decision after getting the recommendations of the Chief Commissioner of Central Excise as also the Customs (respondents 3 & 5). The second respondent had, after considering the entire aspects and taking into account the recommendations made by respondents 3 & 5 and also the requirements in either department, decided that out of 24 posts of Superintendents found in excess in the Customs Department, 14 should be given to the Central Excise. On a careful reading of A-10 especially paragraph 3 & 4, we find that the second respondent has very carefully analized the fact situation in obedience to the directions contained in the Tribunal's order and has taken a just and proper conclusion. We do not find any reason even to doubt the propriety of the decision taken as it has been taken at a very high level after taking into account the relevant factors and getting the recommendations of two high officers - Chief Commissioners of Central Excise as also Customs.

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8. In the light of what is stated above, we do not find anything in this application which calls for its admission and further deliberation and, therefore, this application is rejected under Section 19 (3) of the Administrative Tribunals Act, 1985.

Dated 28th June, 2004.

H.P.DAS

ADMINISTRATIVE MEMBER

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A.V.HARIDASAN
VICE CHAIRMAN