

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

51/91

199

DATE OF DECISION 3.7.92

M.K.Vallyammal

Applicant (s)

Mr. S.A. Nagendran

Advocate for the Applicant (s)

Versus

Collector or Customs, Cochin Respondent (s)
& 2 others.

Shri K.Prabhakaran

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

N.V.Krishnan, VC

The applicant is a Deputy Office Superintendent Level-II working under the Collector, Customs, the first respondent. While working as an Upper Division Clerk, on which post she was confirmed from 20th June, 1986, the applicant was promoted purely on adhoc basis as Deputy Office Supdt. Level II by the order dated 25.3.88 (Ann. A2). She was also regularised on that post on 15.12.88 by the Annexure A3 order and it is alleged that this has been done without getting her prior consent.

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2. For, it is submitted that the practice so far has been that UDCs who have been given officiating promotion as Deputy Office Superintendent Level II are also considered for promotion as Inspector Customs or Examiner on the executive side and for this purpose, they are reverted again as UDC. In other words, the temporary officiation as Deputy Office Supdt. Level II, never used to come in the way of such persons being considered in their turn for promotion as Preventive Officer or Inspector or Examiner. The applicant has tried to establish this by citing the case of Srimati Sarojini by producing her orders of promotion as Deputy Office Supdt. and order of reversion as UDC (Ann. A4) and the further order of her promotion dated 9.2.88 as Examiner (Annexure A5).

3. The main grievance of the applicant is that this system has been given up and it is now prohibited by a clarification dated 10.6.88 (Ann. A6) issued by the Government in respect of a doubt raised by a Collector of Central Excise. That letter reads as follows:

"A point has been raised by a Collector of Central Excise as to whether UDCs who have been promoted to the grade of Dy. Office Supdt. Level II can be reverted to their substantive grade of UDC, at their own request, for consideration of their promotion to other grades such as Inspector of Central Excise, etc. The matter has been considered in consultation with Department of Personnel and Training and they have observed that when the individuals have already accepted the promotion, their reversion to the lower post is not in order as it would create administrative problems in filling up the posts. Department of Personnel and Training have, therefore, advised that reversion of the persons working as Dy. Office Supdt. Level II to UDCs simply for the purpose of considering them for promotion to other posts is not in order. The advice of Department of Personnel and Training may be noted for compliance in future."

4. It is stated that it is because of this Annexure A6 letter that the applicant was not considered for promotion to the executive line, though she had made a representation on 5.1.1989 (Ann. A7) praying that her option for being considered for the post of Examiner be called.

5. It is stated that the post of UDC is a feeder category post simultaneously to the posts of Deputy Office Supdt. Level II on the one hand on the ministerial side, which carries a lower pay scale of Rs 1400-2300, as well as to the executive posts of Inspector/Examiner/Preventive Officer in the pay scale of Rs 1640-2900 on the other hand. When vacancies in the executive cadre are not available, the senior persons are promoted temporarily as Deputy Office Supdt. Level II. They are then considered, in their turn, along with others for promotion to the executive line also. This practice has been stopped after the issue of the Ann. A6 letter.

6. The Ann. A7 representation was rejected by the Ann. A8 memorandum, mainly on the basis of the Ann. A6 clarification. In reply to the applicant's further representation dated 20th of June 1990 in this behalf (Ann. A9) she was informed by the Ann. A10 memorandum dated 31.12.90 of the first respondent that the Central Board of Excise and Customs has clarified that the instructions (Ann. A6) have been issued on the advice of the Department of Personnel and Training and therefore, these instructions do not call for review and hence her request for consideration for promotion to the grade of Examiner could not be acceded to.

(2)

It is in these circumstances that this application has been filed seeking the following reliefs:-

- "(i) To direct the first respondent to promote the applicant as Examiner in the Custom House, Cochin since the applicant is entitled to be promoted as Examiner by virtue of her seniority;
- (ii) To direct the first respondent not to comply with Annexure-A6 clarification in the case of the Applicant, since it is pertaining to the Central Excise in the appoint of Inspector of Central Excise and since the Applicant's consent was not obtained by the first respondent before confirming her in the post of Dy. Office Supdt. Level-II she is entitled to be promoted as Examiner;
- (iii) To quash Annexure-A8 and A10 memorandums issued by the first respondent on the basis of Annexure A6 clarification;
- (iv) To direct the first respondent not to appoint or promote any one as Examiner, except the Applicant till the disposal of the Original Application."

7. The respondents have filed their reply contending that the applicant is not entitled to any relief and that the application deserves to be rejected. While the broad facts mentioned in the application are not disputed, it is contended that there is no need, whatsoever, to obtain the prior willingness of the applicant for promoting her from UDC to the grade of Deputy Office Supdt. Level II because this is a natural promotion on the ministerial side. Consent of a UDC has to be taken only if promotion is to be made on the executive side like Examiner, Preventive Officer, etc.

8. It is admitted that, prior to the issue of Ann.6 letter, persons temporarily promoted as Deputy Office Supdt. Level II were also considered for promotion as

Preventive Officer/Examiner. However, after issue of the Annexure A6 memorandum and after regularisation of the applicant in the post of Deputy Supdt., she could not be considered for promotion on the executive side as Examiner/Preventive Officer.

9. It is also submitted by the respondents that the Annexure A6 letter has been published in the CBEC Digest of July 1988 which has been circulated to all the Collectorates for information of all concerned and for compliance.

10. The respondents also state that though the Ann.A6 letter has been issued as a clarification to a point raised by a Collector of Central Excise, it is equally applicable to the Collectorate of Customs also as both offices are under the Ministry of Finance.

11. It is submitted that, at present, there are two vacancies of Examiners against one of which a direct recruit candidate has been offered appointment and there is no proposal to fill up other vacancy at present.

12. We have perused the records and heard the learned counsel on both sides. When the matter came up for hearing on an earlier occasion, the learned counsel for the applicant submitted that the applicant had no knowledge, whatsoever, of the Annexure A6 letter which was not circulated in the office. In addition, in a rejoinder submitted by him, he has enclosed a photocopy

of an order dated 24.12.90 of the Collectorate of Customs, Bombay by which Mr. P.W.Rokade who was earlier promoted as Deputy Office Supdt. in 1988 has been promoted as Examiner by an order dated 24.12.90 (Ann. A11) notwithstanding the directions of Annexure-A6. The applicant also has filed an affidavit as follows:-

"I state that Annexure A6 order dated 10.6.88 was not circulated among the employees and it was not circulated to me also. I am stating so from my personal knowledge and also on the basis of enquiries conducted by me among my colleagues. The reproduction of Annexure A6 order in CBEC Digest of July 1988 is not amounting to circulation among the employees in the Customs House. Normally, monthly issue of CBEC Digest are being received in the office five or six months after its publication. On enquiries, it is understood that 15 copies of the CBEC Digest are usually received in the Customs House and one copy of the Digest is usually issued to various Sections in the Customs House. Usually CBEC Digest contains Notifications issued under the Customs Act as well as the changes in Tariff rates, etc. Therefore, all the employees in the Customs House are not getting opportunity to see the CBEC Digest.

When I was given adhoc promotion as Deputy Office Superintendent Level-II in March, 1988, Annexure A6 order was not issued. I got information about Annexure A6 order only after my confirmation in the post of Deputy Office Superintendent Level-II."

13. Annexure A6 is a well-intended letter, the object of which is to ensure that, as far as possible, the post of Deputy Office Superintendent Level-II is given by promotion, even on an adhoc basis, to only those UDCs who have decided, in advance, not to seek further avenues of promotion on the executive line but to seek promotion on the ministerial line only. It was intended to prevent the senior UDCs from enjoying the best of both the worlds i.e. enjoying the temporary benefit of the ^{post of} Deputy Office Supdt. Level-II when there are no vacancies on the executive side, and then to get promoted on the executive line, when vacancies arise. This has now been rendered impossible by the Ann.A6

letter which requires, in effect, the UDCs to exercise an option, once and for all, whether they want to be promoted on the executive side or ministerial side.

14. However, we are satisfied that when an existing practice is changed, it is necessary to intimate the officials concerned and if, as in the present case, the change has implications for future promotions and opportunities, the concerned officials should be given an opportunity to consider the changes made and take further action. Thus, when the applicant was promoted as Dy. Office Supdt. Level II by the Annexure A2 order on 25.3.88, the Annexure A6 embargo was not in existence. She could freely accept the promotion and rest assured that when her turn for promotion to vacancies of Examiner/ Inspector etc. came, her option would also be called and she would also be considered and if selected, she would be reverted to the post of UDC and then promoted as Examiner. It was necessary to inform all concerned like the applicant so that they could volunteer to get back to the post of UDC, to escape from the consequences stipulated in Ann.A6.

15. Therefore, this letter should have been brought to the notice of the applicant who could then have stepped down to give way to other UDCs who want to seek promotion only on the ministerial line. It is highly improper to confirm the applicant as Dy. Office Supdt. Level-II without giving her this information and choice and telling her that her further promotion on the executive side is barred by Ann.A6 letter. She cannot be presented

with such a fait accompli.

16. The learned counsel for the respondents contended that, as a matter of fact, ~~exist~~ the necessary information ^{is} in

applicant, in fact, continued as DOS Level-II after receipt of such information.

Ann. A6 was published in CBEC Digest, and hence the

17. It is in this regard the aforesaid affidavit has been filed by the applicant. It is submitted by the ^{the applicant} counsel for

that the Ann.A6 letter is ^{no doubt,} published in the CBEC Digest,

But the applicant has stated emphatically that she got the information about the Ann.A6 order only after her confirmation in the post of Dy. Office Supdt. Level-II. If this

is true, this circumstance ^(i.e. publication) by itself, will not be enough

to bar considering her promotion to the executive side

for the reasons already given above. A copy of this

affidavit dated 4th April 1992 has been served on the

learned counsel for the respondents on 7.4.92. The

respondents were given time to make available the original

documents or to file a counter affidavit. On the last date

of hearing on 28.4.92, there was no representation from

the side of the respondents. Neither any counter affidavit

was filed. nor was any submission made on behalf of respondents.

Hence, the case was reserved for orders.

18. In our view, in the face of the emphatical denial

by the applicant in her affidavit, it was the bounden

duty of the respondents to deny the averments made in the

affidavit if it was not correct and produce records to

prove the contrary. For, it was within the means of the res-

pondents to produce records to show that the CBEC Digest

of July 1988 was, in fact, circulated to the Section where the applicant was working and that the applicant had full opportunity to see this Ann.A6 letter much before her confirmation in December 1988. Having failed to do so, we are of the view that an injustice has been done to the applicant in denying her the promotion to the executive line on the basis of the Annexure A6 letter which, in effect, appears to have been issued behind her back.

19. In the circumstances, we allow this application with a declaration that the Ann.A6 letter was not brought to the notice of the applicant in any manner before she was confirmed as Deputy Office Supdt. Level-II and we declare that, notwithstanding Annexure A6 letter, the applicant is entitled to be considered for promotion on the executive line as Preventive Officer/Examiner against the next vacancy that may arise, subject to the other provisions of law. In this view of the matter, it is only fair to permit the respondents to revert the applicant immediately from the post of Dy. Office Supdt. Level-II to that of a UDC, to enable considering her for promotion to the executive side and we do so.

20. The application is disposed of with these directions.

(A.V.Haridasan)
Judicial Member

(N.V.Krishnan)
Vice Chairman

3.7.92.