

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.Nos. 535/2002 & 611/2002

FRIDAY THIS THE 8TH DAY OF JULY, 2005

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER**

O.A.NO. 535/2002

1. Kerala Central Excise & Customs Ministerial Officers' Association represented by its Joint Secretary Ranjit Mathew aged 37 years
S/o C.C. Mathew, Upper Division Clerk
O/o the commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road, Cochin
residing at Cheriakkara House
Koodapuzha Road, Chalakudy.
2. S.K. Chitra aged 40 years D/o late Shri SK Moorthy
Tax Assistant, Central Excise, Ernakulam-I Division
residing at Sree Visakh, Manakkaparambu Road
Ponekkara, Edappally P.O. Cochin-24
3. Ruby S. Thomas aged 35 years S/o PM Mathew
Tax Assistant, Central Excises & Customs, Palakkad Division
residing at Elapunkkal House, Master Lane
Chembukavu, Trichur District.
4. ✓ Rajini D/o late K. Krishnankutty Menon
Tax assistant, Central Excise & Customs, Trichur Division
residing at Veetikezhy House, Post Kaukkad Via Kunnampulam
Trichur District.
5. K. Said Fazil S/o Kunhi Mohammed, Tax Assistant
Central Excise & Customs, Headquarters Officers
Calicut residing at Molath House
Areacode, Malappuram District.
6. Stanly C.P. S/o C.D. Pappachan
Tax Assistant, Central Excise & Customs,
Ernakulam -II Division residing at Chiranpanath House
Chalakudy, Trichur District.
7. V.P. Rebu s/o V.A. Paulose, Tax Assistant,
Central Excise & Customs, Headquarters Office
Cochin residing at Customs Quarters No.10-W.I, Cochin

8. Aiyakumar K.P. S/o K.P. Narayanan Nambeesan
Tax Assistant, Central Excise & Customs, Trichur Division
residing at Krishaprabha, Padinjattumuri,
Wadakkancherry
9. L.C.Selinamma D/o P.S. Chacko, Tax Assistant
Central Excise & Customs Ernakulam-I Division
residing at Sangeerthanam, Polchira,
Kakkanad, Cochin
10. P.K. Pran S/o Krishnan, Tax Assistant
Central Excise & Customs, Ernakulam-II Division
residing at H.No.12/1281, Chullickal, Cochin-5
11. K.K.Mohanan S/o late M.K. Kochuram, Tax Assistant
Central Excise & Customs, Headquarters Office
Cochin residing at Komandy House, Cherai P.O.
Ward No. XIV, N. Parur, Ernakulam Distt. Applicants

By Advocate Mr. Shafik M.A.

Vs.

1. Union of India represented by Secretary
Ministry of Finance, New Delhi.
2. The Chairman, Central Excise & Customs
North Block, New Delhi.
3. The Chief Commissioner of Customs & Central Excise
Bangalore Zone, CR Building, Queens Road,
Bangalore-560 001
4. The Commissioner of Central Excise
CR Building, IS Press Road,
Cochin-682 018
5. T.D. Fleming, Inspector, Customs & Central Excise
Commissionerate,
Calicut.
6. Rejith S. -do-
7. K.R. Raji, -do-
8. T.G. Rejith, -do-
9. P.P. Rajeev, -do-
10. Dinesh Babu P. -do-
11. S. Radhesh, Inspector

Customs & Central Excise Department
residing at Puthenveedu, Quilon

12. K. Sukumaran, Inspector
Customs & Central Excise department
residing at Kulangarethu House
Kandoth P.O. Payyannur
Kannur District
13. V.B. Anoop Inspector
Customs & Central Excise Department
Vazhapally House P.O.
Edamuttomm Trichur Distt. Respondents

By Advocate Mr. Varghese P. Thomas, ACGSC for R 1-4
Advocate Mr. CT Ravikumar for R -5, 6, 11 & 12
Advocate Mr. Rajasekharan Nair for R 7-9
Advocate Mr. V.V. Surendran for R-10

O.A.611/2002

1. S. Radhesh Inspector,
Customs and Central Excise Department
residing at Puthenveedu
Quilon
2. K. Sukumaran, Inspector
Customs & Central Excise Department
residing at Kulangarethu House
Kandoth P.O. Payyannur
Kannur District. Applicants

By Advocate Mr. C.T. Ravikumar

Vs.

1. Union of India represented by the Secretary
Ministry of Finance, New Delhi.
2. The Chairman, Central Board of Excise & Customs
North Block, New Delhi.
3. The Chief Commissioner of Customs & Central Excise
Bangalore Zone, CR Building, Queens Road,
Bangalore-560 001
4. The Commissioner of Central Excise
CR Building, IS Press Road,

Cochin-682 018

- 5 Ruby S. Thomas D/o .M. Mathew
Tax Assistant, Central Excise & Customs,
Palakkad Division residing at Elapunkkal House
Post Kaukkad Via Kunnamkulam
Trissur District.
- 6 V. Rajini D/o Late K. Krishnankutty Menon
Tax Assistant, Central Excise & Customs
Trichur Division residing at Veetikeezhy House,
Post Kaukkad Via, Kunnamkulam
Thrissur District.
7. K. Said Fazal S/o Kunhi Mohammed,
Tax Assistant, Central Excise & Customs
Headquarters Office, Calicut residing at
Molath House, Areacode, Malappuram District.-....Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1-4

The Applications having been heard on 23.6.2005 the Tribunal on.....8..7.2005 delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicants in this OA are aggrieved by the proposal of the 3rd respondent to permit inter-commissionerate transfer to Inspectors of Central Excise working in different Commissionerates to the vacancies in different Commissionerates purportedly in violation of the decisions of the 1st and 2nd respondents based on the decision of the Union Cabinet. The first applicant herein is the Association of Tax Assistants, Upper Division Clerks and Lower Division Clerks of Central Excise, Cochin. Applicants 2 to 11 are members of the said Association. They have also impugned the order dated 29.7.2002 issued by the 3rd respondent granting approval for Inter- Commissionerate transfer to 12 persons from various regions (Annexure A1). When this O.A. was pending before this Tribunal two persons namely Shri S. Radhesh and K. Sukumaran who along with others

were transferred under the above Annexure A1 order from various Commissionerates to Cochin Commissionerate filed OA 611/2002 before this Tribunal which was heard and rejected under Section 19(3) of the Administrative Tribunals' Act 1985 on the ground that ~~for~~ the proper course for the applicants would be to get themselves impleaded in OA No. 535/2002 seeking proper interim relief in that case rather than seeking the prayers contained in para 8 in this O.A so as to avoid multiplicity of proceedings and conflict of judgments. The above order of the Tribunal was challenged before the Hon'ble High Court in O.P. No. 26360 of 2002 and the Court ordered the following:

"Instead of dismissing the O.A. if both the OAs are taken together and heard, conflict of decisions can be avoided. It is for the Tribunal to take a decision on merits according to law, after hearing the petitioners. Therefore, Ext. P-9 is set aside and O.A.No. 611 of 2002 is restored to the file of the Central Administrative Tribunal, Ernakulam Bench to be heard along with O.A.No. 535 of 2002 untrammelled by the observations made in Ext. P-9".

2. As directed by the Hon'ble High Court. above, O.A. 611/2002 was restored and was heard along with O.A. 535/2002.
3. After hearing both sides, both the OAs are now being disposed of by a common order.
4. Facts as stated by the applicants in O.A. 535/2002 can be briefly summarised as follows. As per the decision of the Union Cabinet, existing cadres of the Customs and Central Excise Departments have been restructured. Consequently there was reduction/addition in the number of posts in certain cadres. As per Annexure A3 orders dated 19.7.01 the first respondent communicated the approval of the restructuring of the Department to all Commissioners under him. It was mentioned therein that no direct recruitment may be made to various grades for the year 2001-02

without approval of the Ministry as Cabinet has approved a one time relaxation for filling up all existing vacancies by promotion in all cadres prior to restructuring. It was further clarified by order dated 10.9.01 that direct recruitment to any grade was specifically prohibited till further orders. On 5th June, 2002 Annexure A6 order was issued after completing the restructuring exercise and fixing the strength of various cadres in all the Commissionerates. In this order it was reiterated that ban of direct recruitment would continue and ordered not to fill up the vacancies till such time further orders are issued. According to the applicants there were 14 direct recruit vacancies of Inspectors as on 22.2.2002 and these vacancies will have to be filled up by promotees by promotion from the ministerial staff who are entitled to such promotion and there is acute stagnation in the cadre of the applicants. But the respondents are trying to fill up the vacancies by transfer of Inspectors working in other Commissionerates and this is against the specific direction contained in Annexure A-3 order which is based on a decision of the Union Cabinet. On knowing about the clarifications asked for by the respondents on the issue of one time relaxation as part of cadre restructuring, the applicants have submitted representations to the third respondent, but the third respondent in the meantime issued Annexure A1 order granting inter-commissionerate transfer against the vacancies available in violation of all existing instructions. The applicants have assailed this order on the ground that it would create great imbalances in the seniority and the applicants will lose promotions for ever.

5. The official respondents as well as the private respondents have filed reply statements. The official respondents have submitted that inter-commissionerate transfer in the grade of group C officers are effected only

in terms of Annexures R1 and R2 by which the power to issue such orders are vested with the Chief Commissioner of Central Excise. It is further submitted that the cadre restructuring proposals and allocation of posts among various field formations are yet to be implemented and the detailed instructions governing the manner of filling up of vacancies at all levels are yet to be notified. On restructuring 642 posts of Inspectors of Central Excise have been allotted to the Kerala cadre as against the existing strength of 509 thus resulting in additional 133 posts. Once the amended Recruitment Rules are notified these posts are to be filled up from eligible officers. All eligible officers who have rendered the qualifying service and fulfilled other physical standards of fitness etc. would get promotion and still a few vacancies may remain unfilled. Under the circumstances, transfer of 12 officers working in various commissionerates outside Kerala on compassionate grounds in accordance with the norms made by the Department of Personnel and Training is not discriminatory. Several such inter-commissionerate transfers have been effected in different cadres and no representations have been received from any persons. The orders were issued after getting confirmation from the second respondent regarding the correctness of the same. Out of the 14 vacancies only 12 have been filled and two are reserved for SC category. The transfers now ordered are against direct recruitment vacancies and would in no way affect the officers entitled to promotion.

6. The private respondents in their reply statement have submitted that so far no orders have been issued reserving all the vacancies as promotion quota as contended by the applicants. Annexure A-3 is a letter from the Board and cannot be considered as an order issued relaxing

82

application of Recruitment Rules. The statutory rules contained an enabling provision for considering the inter-commissionerate transfer as against direct recruitment quota vacancies and the said rules have not yet been amended. During the cadre restructuring only direct recruitment is banned and it has been clarified in letter dated 5.8.2002 that the instructions under the cadre restructuring would not be applicable to inter-commissionerate transfer. The contention of the applicants that the entire vacancies in the cadre of Inspector in the Cochin Commissionerate are available only for promotion is therefore unsustainable.

7. Applicants have filed a rejoinder denying the averments in the reply statements. According to them the fact remains that strict ban was imposed on direct recruitment for the purpose of granting promotion against these vacancies and according to the rules and circumstances in the case it was not just and proper to utilise these vacancies for the purpose of effecting transfer from outsiders. There is a clear violation of the instructions that no vacancies in respect of any posts should be filled up. The reason that there is already an increase in the Inspectors posts and that some of the posts have been utilised for transfers is untenable. Therefore the claim of the applicants for promotion are legal and valid and the O.A should be allowed.

8. We heard the learned counsel on both sides and perused the materials on record. The learned counsel for the applicants submitted that though the O.A. was filed in the year 2002 and the facts and grounds have changed materially, since the Department has sanctioned additional posts of Inspectors, the applicants have been able to secure promotions. However, the legal points raised in the OA whether the respondents can fill up the existing vacancies by transfer of outsiders in view of the direction

82

in para 3 of Annexure A3 order is to be decided by the Tribunal. The learned counsel for the respondents stated that nothing more remains to be decided in this O.A., as the applicants have been promoted against restructured posts and the applicants in O.A. 611/2002 joined the post and have been working since then. The learned counsel went on to submit that the inter-commissionerate transfers were effected strictly in accordance with the rules and instructions in force and it was specifically mentioned in Annexure A6 order that the ban on direct recruitment would not apply to compassionate ground appointments.

9. A perusal of the records reveals that the applicants in O.A. 535/2002 approached this Tribunal at a time when the situation arising out of restructuring was in a very fluid state and they felt that if all existing vacancies were filled up by inter-commissionerate transfer their promotional opportunities would be greatly affected. Much water has flowed under the bridge since then and the exercise of restructuring has been completed and additional 133 posts have been created in the cadre of Inspectors and it is admitted by both sides that even after promoting all the qualified candidates from the feeder cadre still some posts remained unfilled. In this context we are inclined to agree with the respondents that the reliefs asked for by the applicants in sub para (i) (part), (ii) and (iii) of Para 8 have already been granted and to that extent nothing survives in this O.A. The only part prayer in para 8(i) namely to declare that the proposal to fill up such vacancies by inter-commissionerate transfer of Inspectors is illegal, arbitrary and violative of Annexure A2, A3, A4, A5 and A6 would remain to be decided. But in our view this also is an academic question at this stage. However, we deal with the same as the learned counsel has submitted that

a decision is required to be pronounced on the issue.

10. The short question is whether the respondents are right in considering inter-commissionerate transfer, once a decision has been taken by the Cabinet that all the vacancies as a one time measure would be filled up by promotion. First of all we would like to state that orders in Annexures A1, A3, A4, A5 and A6 are administrative orders whereas A2 is a statutory rule issued under Article 309 of the Constitution which has a specific provision for considering transfer of persons holding the same post from one cadre to another on 'compassionate grounds'. This power of the authorities which is granted by statutory rules cannot be taken away by administrative instructions and it is not the case of the applicants that any such instructions have been issued banning inter-commissionerate transfer. On the other hand Annexure A-6 order makes it clear in para 7 that whatever ban imposed on direct recruitment would not apply to compassionate ground appointments. The para is extracted below:

"It has been decided to extend the ban on direct recruitment imposed, in terms of para 3 of Deptt's letter F.No. A-11019/72/99 Ad.IV dated 19/07/2001 upto 31.12.2002. However, the ban would be applicable only to the posts that have been included in the cadre restructuring. It has also been decided that the ban on direct recruitment would not apply to compassionate ground appointments made with the approval of the Board."

11. The main ground of the applicants contention is that one time relaxation has been given for filling up all vacancies by promotion. In fact this was not so. The applicants have no claim whatsoever under the Recruitment Rules, to the 14 vacancies which are said to have been existing in 2002 at the time of filing of the O.A, which was under direct recruitment quota. We have not been shown any order by which a

relaxation has come into force reserving all the vacancies for promotion quota. In fact the revised Recruitment Rules were still under consideration at that time. It is seen that vide Annexure A4 order dated 10.9.01 while reiterating that no direct recruitment will be made to any grade till further orders, the Board communicated the decision that the holding of DPCs of Group-B and C posts were frozen and this ban on DPCs for promotion was only partially modified in the order dated 3.1.2002 (Annexure A5) to the extent that only DPC panels already prepared will be given effect to and the DPC can be held on the basis of pre-revised strength for filling up resultant vacancies. Therefore this ban on direct recruitment as well as promotion continued till June, 2002 till Annexure A-6 order allocating restructured posts were issued and even this order was a provisional order in the sense that it was directed that no vacancies should be filled up till such time recruitment rules are issued and hence it could be construed that the ban on filling up of posts continued till Recruitment Rules are finalised. Therefore it is obvious that the Department could not take action for the filling up the vacancies in accordance with the revised allocation by promotion till the detailed orders/recruitment rules were issued which have finally been issued at a later stage. In this order also it is made clear that the ban on direct recruitment would not apply to compassionate appointments. It can therefore reasonably be concluded on a reading of all these orders that the nebulous situation resulting out of the order of restructuring continued even beyond June, 2002 and during this period the instructions also contemplated not only ban on direct recruitment but also filling up of posts on promotion. But under these instructions there was no embargo on going ahead with transfer on compassionate grounds which have the sanction of the statutory rules and this fact was confirmed in

82

Annexure R-3 order of the first respondent dated 5th August, 2002. Therefore we do not find any irregularity on the part of the respondents in issue of these orders. Moreover it is also to be mentioned that employees have only a right to be considered for promotion and not to promotion as such and issues regarding restructuring cadres/enhancement/reduction of posts/etc. are matters within the purview of the administrative authorities and are not subject to judicial review. We are of the view that there is no illegality as such in the orders issued by the respondents under the provisions of the statutory rules.

12. The prayers of the applicant in O.A. 611/2002 also gets disposed of in view of the above observations. Respondents will have to consider the question of determination of the direct recruitment vacancies against which transfer is granted in the light of the existing instructions and this question is left to the authorities to decide if not already decided.

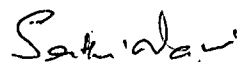
13. Both the OAs are disposed of accordingly, no order as to costs.

Dated the 8th July, 2005.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



SATHI NAIR.
VICE CHAIRMAN