

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.16/98

THIS THE 23rd DAY OF MAY, 2001

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

R.Murali S/o P.Ramachandran,
Intelligence Officer,
Narcotics Control Bureau,
Regional Intelligence Unit,
Trivandrum.14 residing at
TC 36/1370, Jayaprakash Nagar,
West Fort,
Trivandrum.8.

...Applicant

(By Advocate Mr. M.R.Rajendran Nair)

V.

1. The Director General, Department of Narcotics Control Bureau, Department of Revenue, West Block No.5, Wing No.5 R.K.Puram, New Delhi-110 066.
2. The Zonal Director, Narcotics Control Bureau, C-3 Rajaji Bhavan, Basant Nagar, Chennai.90.
3. K.G.Venugopalan Nair, Inspector, Office of the Superintendent of Police, Central Bureau of Investigation, Poojappuram, Trivandrum.
4. Union of India, represented by the Secretary to Government of India, Ministry of Revenue, New Delhi.

(R.3 impleaded vide orders dated 19.1.98 and R.4 impleaded vide orders dated 21.9.2000) ...Respondents

(By Advocate Mr.Govindh K Bharathan (R.1,2&4)
Mr.Shefik MA for R.3)

The application having been heard on 3.4.2001, the Tribunal on 23.5.2001 delivered the following:

O R D E R

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

The applicant while working as Inspector in the

Central Excise Collectorate, Madras was appointed as Intelligence Officer in the Narcotic Control Bureau (NCB for short) Madras Zonal Unit in the scale of pay Rs.2000-3200 initially for a period of three years by order dated 27.8.94 of the Ist respondent. He was transferred to Regional Intelligence Unit, Trivandrum with effect from 17.7.95 at his request. The post of Superintendent in the NCB in the scale Rs.2000-3500 (pre revised) plus 12 percent special pay are to be filled by promotion failing which by transfer on deputation, according to the recruitment Rules (Annexure.R1(a)). Vacancies of Superintendent arose in New Delhi, Chennai and Trivandrum and the Ist respondent issued a vacancy circular dated 29.7.97 (A2) to the commissioners of Customs and central Excise, Directorate of revenue Intelligence New Delhi, Enforcement Directorate, New Delhi, Narcotic Commissioners Office, Gwalior, Inspector General BSF/CRPF/ITBP New Delhi, Deputy Director (Administration, CBI New Delhi and Zonal Inspector, ICB, Chennai, Calcutta, Mumbai, Delhi, Jodhpur, Ahmedabad, Varanasi, Jammu and Chandigarh inviting applications in the prescribed proforma of the eligible and willing candidates who could be spared for appointment immediately on selection to be forwarded to the Director General, Narcotic Control Bureau along with attested copies of the last five years ACR and vigilance clearance certificate so as to reach the Bureau by 25.8.97. It is alleged by the applicant that the A2 notification was not circulated in the office of the Regional Intelligence Unit where the applicant was working. However, even without

seeing the circular but coming to know of the existence of the vacancy at Trivandrum, the applicant on 20.12.97 submitted a representation to the Ist respondent requesting that he be considered for the post of Superintendent, NCB Regional Intelligence Unit, Trivandrum and be promoted (A3). When the applicant saw the circular (A2) at the Customs House, Trivandrum on 24.12.97 he on 26.12.97 made a further representation (A4) requesting that his case be considered despite the delay in submitting the application as the delay occurred not on account of his fault. He also sent a fax message on 2.1.98 stating that the circular was not brought to his notice because of his bad relationship with the Zonal Unit. Apprehending that the selection would be finalised without considering his case and understanding that one Shri K.G.Venugopalan Nair (Respondent No.3) has been selected for appointment, the applicant has filed this application for a declaration that the proceedings for selection and appointment to the post of Superintendent on the basis of A2 circular are unconstitutional and illegal, to direct the respondents to conduct the selection and make appointment to the post in accordance with law considering the candidature of the applicant also and to set aside the selection and appointment of the third respondent. It has been alleged in the application that the non consideration of the applicant who is an eligible and qualified person according to the Recruitment Rules and the notification is arbitrary, discriminatory and violative of fundamental rights and non communication of A2 circular was made by design to forestall his candidature.

2. Respondents 1&2 opposing the claim of the applicant filed a reply statement contending that the applicant's request for promotion as Superintendent could not be acceded to as being a deputationist he was not entitled to be promoted according to the provisions of the Recruitment Rules. They have further contended that his request for appointment to the post of Superintendent was not forwarded to the Headquarters as he was not found suitable for appointment considering his antecedents. It is further contended that though the application submitted by the applicant was belated, the Headquarters considered his case and his application for promotion was rejected by order dated 9.1.98 which was communicated to him. As the applicant does not have a fundamental right for deputation, the respondents 1&2 contend that he is not entitled to the reliefs sought.

3. The application was earlier disposed of by order dated 16.7.98 taking note of the submission of the learned counsel on either side that the third respondent had not joined, that if the official respondents would make a fresh selection, the vacancy would be notified and the applicant if would apply his candidature would also be considered. However, finding that the third respondent thereafter joined the post, the applicant moved for review which was allowed and the OA was reopened for hearing.

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4. The third respondent filed a reply statement stating that he having been selected for appointment to the post has joined the post of Superintendent and that there is no vitiating circumstances in his selection. The applicant has filed a rejoinder. .

5. The learned counsel for official respondents made available for our perusal the entire file which led to the filling up of the post of Superintendent, NCB, Trivandrum Unit which shows that the case of the applicant was considered.

6. We have perused the entire material placed on record as also the file relating to the selection and have heard the learned counsel appearing on either side. That the circular A2 was not circulated in the office of the NCB, Unit Trivandrum Region where the applicant was working is practically admitted. This obviously disabled the applicant from putting forth his candidature within the stipulated date. But on account of non-circulation of the circular on time, the applicant was not put to any disadvantage because his request for appointment as Superintendent, NCB, Trivandrum was infact considered by the Ist respondent despite the delay and despite the fact that the second respondent had decided not to forward his application. The applicant has been given a reply to his application for promotion as Superintendent by the headquarters rejecting his claim by order dated 9.1.98. The applicant has not in



his rejoinder controverted the averment in the reply statement that the headquarters by order dated 9.1.98 rejected the applicant's application for promotion. He has also not challenged this order by filing an amendment to the Original Application. The claim of the applicant that his fundamental right has been violated in not selecting him does not merit serious consideration because his right, if any, was only for consideration of his request for appointment. The Ist respondent has considered his request and rejected the same. The eligibility of the applicant for consideration for deputation is also not free from doubt because A2 circular dated 29.7.97 in the penultimate paragraph states thus:

"Applications in the prescribed proforma (copy enclosed) of the eligible and willing candidates, who can be spared for appointment immediately on selection in this Bureau may please be forwarded to Director General, Narcotic Control Bureau, West Block I, Wing No.5, R.K.Puram, New Delhi-66 along with the attested copies of the last five years ACRs and vigilance clearance certificate so as to reach this Bureau by 25.8.97."

The applicant who was already on deputation could be considered only if he could be spared. Further, as per the circular the period of deputation including the period of deputation in other ex-cadre posts in the same or other organisation/department of the Central Government should not ordinarily exceed three years. By the time when the notification (A2) was issued the applicant had already been on deputation for about three years. There is no indication

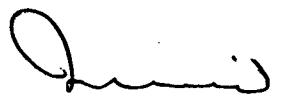
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as to whether the applicant could be spared by his parent department, the Department of Central Excise and Customs and the NCB from the post of Intelligence Officer. The applicant's application (A3) was for promotion and in A4 he has invited attention to the representation (A3) and sought appointment as Superintendent. According to the Recruitment Rules, promotion to the post of Superintendent would be made on non selection basis from among Intelligence Officers who have two years of regular service in the department. The applicant being only a deputationist had no right to be considered for promotion.

6. In the case of deputation paramount consideration is the requirement of the borrowing department and the decision of the borrowing department of the suitability of the officer concerned. The case of the applicant having been considered and found not suitable and the third respondent having been selected and appointed we are of the considered view that judicial intervention in the matter is not justified. The post in question is a sensitive one and decision of the competent authority regarding the suitability of the official concerned, if made in a manner not vitiated, does not justify judicial intervention. No malafide has been alleged against the competent authority who made the selection. We do not find that there is any infraction of statutory rules or binding administrative instructions in the process of selection.

7. In the light of what is stated above, we do not find any merit in this application and therefore, we dismiss the same leaving the parties to bear their own costs.

Dated this the 23 day of May, 2001



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(S)



A.V. HARIDASAN
VICE CHAIRMAN

List of Annexures referred to in the Order:

1. Annexure A2 True copy of the vacancy circular NCB F.No.II-14(8)/94-Estt dt 29.7.97 issued by the 1st respondent.
2. Annexure A3 True copy of the representation dt. 20.12.97 submitted by the applicant to the 1st respondent.
3. Annexure A4 True copy of the representation dt. 26.12.97 submitted by the applicant to the 1st respondent.
4. Annexure R-1(a) Recruitment Rules of Department of Revenue, Narcotics Control Bureau, 1996.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 16/98

Thursday the 16th day of July 1998.

CORAM

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

R.Murali
S/o P.Ramachandran
Intelligence Officer
Narcotics Control Bureau
Regional Intelligence Unit
Thiruvananthapuram
R/o T.C.36/1370, Jayaprakash Nagar
West Fort, Thiruvananthapuram.

...Applicant.

(By advocate Mr MRR Nair)

Versus

1. The Director General,
Department of Narcotics Control Bureau
Dept. of Revenue, West Block No.5
Wing No.5, RK Puram, New Delhi.

2. The Zonal Director
Narcotics Control Bureau
C-3, Rajaji Bhavan, Basant Nagar
Chennai - 90.

3. K.G.Venugopalan Nair
Inspector
O/o Supdt. of Police
Central Bureau of Investigation
Poojapura, Thiruvananthapuram.

...Respondents.

(By, advocate Mr S.Radhakrishnan)

Application having been heard on 16th July 1998,
the Tribunal on the same day delivered the following:

ORDER

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

Applicant who is presently working as Intelligence Officer, Narcotics Control Bureau, Regional Intelligence Unit, Thiruvananthapuram has filed this application challenging the proceedings of selection which led to the selection of third Respondent for appointment as Superintendent on the ground that before making the selection, the vacancy was not duly notified, thereby denying him an opportunity of putting forth his candidature. The applicant has sought annulment of the selection and a direction to make a fresh selection considering his candidature also.

2. Respondents 1 & 2 pursuant to notice entered appearance through Additional Central Govt. Standing Counsel and has filed a detailed statement opposing the prayer of the applicant. Third respondent, although served notice, did not file any reply. Pleadings in this case are complete but as it is comparatively a fresh case, it has not reached its turn for hearing. However, the applicant has filed an MA (671/98) for early hearing, in which it is stated that the third respondent, though selected and offered appointment, did not join the post.

3. Learned counsel for the applicant states that in view of the fact that the third respondents has not joined the post for which the selection has been made, he is not pressing the reliefs but would restrict his claim to a direction only to the respondents to consider his candidature in case the respondents make a fresh selection. Learned counsel for respondents states that in case the respondents would be making a fresh selection, the matter would be duly notified and if the applicant applies, his case would also be considered.

4. In the light of above submissions by learned counsel on either side, application is disposed of directing the respondents that if they intend to make a fresh selection, the vacancy shall be notified and if the applicant applies, his candidature shall also be considered. No order as to costs.

Dated 16th July 1998.


(P.V. VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER


(A.V. HARIDASAN)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

RA 16/98 in
OA 16/98

Thursday the 10th day of September 1998.

CORAM

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

R. Murali
S/o P. Ramachandran
Intelligence Officer
Narcotics Control Bureau
Regional Intelligence Unit
Rhiruvananthapuram,
R/o T.C.36/1370 Jayaprakash Nagar
West Fort, Trivandrum.

...Review applicant

(By advocate Mr M.R.Rajendran Nair)

Versus

1. The Director General
Department of Narcotics Control Bureau
Department of Revenue, West Block No.5
Wing No.5, R.K.PURAM, New Delhi-66.
2. The Zonal Director
Narcotics Control Bureau
Chennai.
3. K.G.Venugopalan Nair, Inspector
Office of the Deputy Supdt. of Police
C.B.I., Poojappura, Trivandrum.

...Respondents.

(By advocate Mr S. Radhakrishnan, ACGSC)

The review application having been heard on 10th September 1998, the Tribunal on the same day delivered the following:

O R D E R

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

Applicant in the original application has filed this review application for a review of the order passed on 16.7.98. The original application was directed against the selection and appointment of the 3rd respondent without giving an opportunity to the applicant to be considered. When the application came up for hearing, noting that the 3rd respondent in the OA had not taken up the appointment, learned counsel for the applicant submitted that the application may be disposed of with a direction to the respondents that if and when a further selection is being made, the applicant may also be considered. The learned counsel of the respondents

1 & 2 also submitted that when a fresh selection would be made, the the applicant would apply, his candidature would also be considered. Accordingly, as suggested by the learned counsel of the applicant and as agreed to by the counsel of the respondents, the application was disposed of with the above said directions. Now the original applicant, alleging that the 3rd respondent is likely to join the post, has filed this application for a review stating that the interest of justice demands an adjudication of the matter on merits. Now we are informed that the 3rd respondent has already joined the post.

2. After hearing the learned counsel for the review applicant as also the Additional Central Govt. Standing Counsel, we are of the considered view that there is merit in the claim of the applicant for a review. Therefore, we allow the Review Application, recall the order passed on 16.7.98 in the OA and restore the OA to file.

Dated 10th September 1998.


(P.V. VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER


(A.V. HARIDASAN)
VICE CHAIRMAN

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