

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.160/2003

Monday, this the 12th day of December, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.S.Rosamma,
Tax Assistant,
Custom House,
Kochi-9.

- Applicant

By Advocate Vellayani Sundara Raju

vs

1. Union of India represented by
Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Commissioner of Customs,
Custom House,
Kochi-9.

- Respondents

By Advocate Mr TPM Ibrahimkhan, SCGSC

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Smt. P.S.Rosamma, Tax Assistant, Customs House, Kochi has moved this O.A to seek her rights of promotion to the post of Examiner, as an ST candidate under the post-based roster system.

2. As regards the facts of the case, the applicant is presently working as a Senior Tax Assistant. Her next promotion is to the cadre of Inspector (Examiner) with a sanctioned strength of 24. The post-based roster system has been in operation since 2.7.97. According to the respondents, separate rosters are being maintained for direct recruitment, regular and ad hoc promotions. 63 2/3% of the vacancies are to be filled up by direct recruitment and 33 1/3%, by promotion. This also factors the question of



reservation for SC/ST candidates. According to the positive assertion of the applicant, there are three back-log vacancies meant for S.Ts and no efforts are being made to fill them up by the respondents. Her allegation is that while on one hand, ad hoc promotees are allowed to continue, no efforts are being made to give regular promotions to such deserving candidates like her. She had earlier filed O.A.552/2002 in which this Tribunal had directed the respondents to consider her name for promotion as Examiner at the appropriate roster point as expeditiously as possible, in any case, within a period of three months from the date of receipt of copy of the order. That was so considered but the order passed by the respondents on 19.2.2003 has been impugned in this OA. In that order, it was pointed out that out of the sanctioned strength of 24, the post reserved for ST candidates was only one. The vacancy in that post occurred only on 3.2.2003 and hence it was not a carry-forward vacancy. One of the eligibility conditions prescribed by the Recruitment Rules for consideration to that post was the successful completion of certain physical tests and possession of physical conditions. Despite notice to the applicant to take the test as a prelude to possible promotion, she failed to appear in the test. Her plea was that the vacancy actually pertained to that period of time when the then-existing and applicable recruitment rules had not prescribed the above mentioned physical tests and possession of physical conditions. The impugned order gave a second opportunity. Aggrieved against this order, she has filed this O.A.

3. She claims the following reliefs:

- i) Quashing the impugned A-10 orders, a necessary direction is to be issued to the respondents to review the roster to the post of Examiner in accordance with the guidelines relating to post-based roster maintenance and to promote the applicant in the



carry forward post of Examiner with retrospective effect with all consequential benefits.

ii) To direct the respondents to introduce post-based rosters.

lii) To declare that there is a carry forward vacancy;

She stakes her claims on the following grounds :

i) The direction of this Tribunal in O.A.552/02 was not properly carried out, which resulted in the applicant losing promotion chances through the impugned order.

ii) The applicant was entitled to be promoted from the end of 1992 onwards.

iii) Such entitlement was in terms of the recruitment rules prevalent on the date of occurrence of such vacancy.

iv) There are vacancies of three posts meant for S.Ts in the promotion quota left unfilled by the 2nd respondent.

4. The respondents oppose the application on the following grounds

i) The present cadre strength of Examiners is 24 which remains unchanged even after cadre restructuring. The post-based roster is in operation with effect from 2.7.97, with separate rosters being maintained for regular and adhoc promotions.

ii) When a vacancy arose in the cadre on 3.2.2003, opportunities for attending the physical endurance test were given to the applicant on 24.12.2002, 26.2.2003 and 28.2.2003, which the applicant did not avail herself of.

iii) The claim of three back-log vacancies is not correct.

iv) In compliance with the orders of this Tribunal, a speaking order was given to the applicant which has been impugned now.

v) New recruitment rules 2002, notified on 7.12.2002 have



superseded those of 1979, introducing an element of physical endurance test for promotion. These rules apply to the applicant as the vacancy occurred on 3.2.2003. Despite three offers, latter two after the orders of the Tribunal dated 27.11.2002, the applicant failed to make use of the same.

5. We have heard the learned counsel of the parties and perused the documents including the roster maintained by the department and the files and documents relating to OA 552/2002.

6. The points for consideration are as follows:

- i) Does the applicant have a valid claim about the existence of carry-forward vacancies.
- ii) If so, the date of occurrence of such vacancy and the recruitment rules which applied to her case.
- iii) Does she have a valid claim for promotion.

7. As regards the point whether the applicant has a valid claim about the existence of carried forward vacancies, the cadre strength of the post of Inspector (Examiners) is 26 according to the applicant and 24 according to the respondents. A perusal of the file relating to O.A.552/2003 which was disposed of by an order dated 27-11-2002 shows that, in that O.A, the respondents had admitted a figure of 26 as the cadre strength of the grade of Examiners. For this cadre strength, the split between direct recruits and promotees based on the ratio of 2:1 was 17 direct recruitment posts and 9 promotion posts. Based on the post-based roster, only one ST post and three SC posts were earmarked. Against that, at that point of time, there were one ST and 6 SC candidates. The department had taken the stand in that OA that there was no carry forward vacancy. The single ST candidate, presently working, was recruited directly in 1996, thus filling in the slot of the ST vacancy. This is in contrast to the claims of the applicant

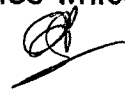


that she was entitled to be promoted right from 1992. In that case she should have challenged this direct recruitment. Whether the cadre strength is 26 or 24, the difference is too insignificant to cause any difference to the case of the applicant. Turning to the question of carry forward vacancy, the applicant has not conveyed clearly the import of the adjective used. The more possible explanation thereto is that the term carry-forward vacancy refers to the vacancies which ought to have gone to ST candidates, but due to certain reasons they were not filled by such candidates and they are still available for such filling. This explanation does not seem really to work on a perusal of the OA 552/02. The applicant in that O.A had filed a copy of the representation made to the respondents (A-6) on 5.11.2001. In the third paragraph of the said representation, she had said "....There is a **back-log vacancy** (emphasis supplied). Still I was not granted regular promotion **to that post** (emphasis supplied)." Hence the implication was about the existence one single vacancy. In the 4th paragraph of the ibid document, she mentioned the availability of three posts, first one created with the sanction of the Government of India vide letter dated 31.5.2001, the second arising from the retirement of Smt.K.N.Sarojini on 30.6.2001 and the third arising on the deputation of Smt.Santhi (date not mentioned). She had concluded her representation with the prayer to grant her promotion to the **back log vacancy** (emphasis supplied) meant for ST by filling any one of the three existing vacancies of Examiner. Here again the implication was about the existence one single vacancy. Hence all along she had referred to the existence of only one vacancy. But, even in that OA, she had not clearly led any evidence to the existence of a carry forward-vacancy to start with. Quite surprisingly, in the present O.A, in the synopsis, she contends vide paragraph 3 that three back-log vacancies meant for S.Ts alone can be seen left unfilled in that category. Based on



the records available so far, the only conclusion to be drawn is that the applicant herself is inconsistent in her pleadings, even the evidence for the existence of one carry-forward vacancy was not furnished by her, while in the earlier representation she had asked for the benefit of promotion against the carried forward single vacancy out of any one of the three available posts, in the present O.A, she has, without adequate evidence, converted all the three posts as carried forward. She lays much stress on the post-based roster system. But she forgets the mode of filling in of the three vacancies mentioned above. Of the three posts mentioned by her, at least two of them fell vacant on account of the incumbents, both belonging to the general category, leaving them for reasons of retirement and deputation and the consequential vacancies can be, if at all, be filled in only by candidates belonging to that category, leaving no scope for the applicant, who belongs to the ST category, to claim them. As pointed out by the respondents, for a cadre strength of 26 posts, the number of S.Ts is only one and for the sub cadre of promotees, there is no earmarked S.T post. About her contention that the department is not maintaining the post-based roster properly, the registers were requisitioned. It is seen that they have been maintained in terms of the authority of the DOPT OM No.36012/2/96 Estt. Dated 2.7.97. Each page of the register is countersigned by five officials including two Liaison Officers, one for OBC, one for the SC/ST, the Assistant Commissioner(Establishment) and Deputy Commissioner(Establishment). It is difficult to doubt the veracity of the entries, in the light of counter checking by all these officials. In the light of the above, it is found that the applicant has not proved conclusively the existence of any carry forward post for the ST, much less three posts.

8. As regards the point about the date of occurrence of such vacancy/vacancies, if in existence and the recruitment rules which applied



to her case, it has not been shown conclusively that a carry forward vacancy exists, as noted above. The respondents have produced copies of post-based roster of direct recruit examiners, promotee examiners and consolidated copy of both direct and promotee examiners. These were found to be the true reproduction of the roster-documents produced earlier before the Tribunal, actually being maintained and duly countersigned by the Liaison Officers for OBC and SC/ST. No convincing case has been made about any false entry. As the single vacancy came into being only in 2003 against which the applicant was to be considered subject to her clearing the physical endurance requirements, on a date after the notification of the amended recruitment rules, the latter alone applies to the applicant. If these rules impose physical test, the same should have been taken by the applicant. Hence we find that there was only vacancy which arose in 2003 and the recruitment rules of 2002 apply to that vacancy.

9. As regards the point whether she has a valid claim for promotion, it is answered in the affirmative but it would be only in the future when a vacancy arises in terms of the roster and not otherwise. It might be true that she was eligible for promotion with effect from 1992. But, there should be a vacancy to accommodate her. While passing, it is also noted that there are considerable number of adhoc promotions made which should be filled actually under the applicable rules and instructions. In that event perhaps the applicant can have a promotion in due course.

10. We therefore find that

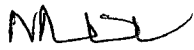
- the applicant has not proved the existence of even a single carry forward vacancy,
- only one vacancy arose in 2003,
- this vacancy can be filled up only in terms of the amended recruitment rules of 2002,



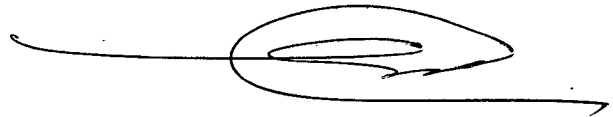
- the applicant has refused to attend the physical endurance test despite three chances given to her and
- she has thus forfeited her right of consideration for promotion against that vacancy.

11. Based on the above findings, we hold and direct that the OA be dismissed. No order as to costs

Dated, the 12th December, 2005.



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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