

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
OA NO. 162/07**

FRIDAY THIS THE 6th DAY OF JULY, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

Sarachandran N.S. S/o K. Nadarajan
Sweeper (Canteen) Central Excise Bhavan
Kathrikadavu, Ernakulam
residing at Rajan Nivas, Kannimel Cherry
Maruthadi PO
Kollam district

..Applicant

By Advocate Mr. K.P. Satheesan

Vs.

- 1 Union of India represented by the
Secretary to Government
Ministry of Finance, First Floor,
Lok Nayak Bhavan
New Delhi-110 003
- 2 The Commissioner
Central Excise and Customs
Cochin Commissionerate CR Building
I.S. Press Road, Kochi-682 018
- 3 The Joint Commissioner (P&V)
O/o Commissionerate of Central excise and Customs
Cochin Commissionerate, CR Building
IS Press Road, Kochi-682 018
- 4 The Administrative Officer (HQ)

O/o Commissionerate of Central Excise
Cochin Commissionerate Central Revenue Building
I.S. press Road, Kochi-682 018 ..Respondents

By Advocate Mini R. Menon

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this OA a person appointed on compassionate grounds, has sought the following reliefs in this application:

- i) To set aside Annexure A5 order issued by the 4th respondent as it is illegal and void;
- ii) To issue an order or direction to the Respondents 2 & 3 to change the appointment of the applicant as counter clerk/storekeeper/salesman/Bearer
- iii) To issue such other order or direction as this Hon Tribunal may deem fit and proper in the facts and circumstances of the case.

2 The applicant was appointed as a Sweeper in the canteen vide Annexure A-2 order dated 24.3.2003. As per the Rules for appointment as Counter Clerk, SSLC qualification is sufficient and the applicant was having SSLC and a pass in stenography and a diploma in computer applications. But, six persons were appointed along with him and S.No 2 therein was appointed as a Counter Clerk when the applicant was appointed only as a Sweeper, and one of the contentions of the applicant is that individual had refused the appointment and he could have been given that post. Due to dire necessity he had accepted the appointment and joined duty as a Sweeper, since then he had been representing that he may be

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appointed as Counter Clerk based on his educational qualifications but the respondents have rejected his representation by the Annexure A-3 and A-5 orders. It is further submitted that the applicant was requesting for a change in the appointment but the respondents have wrongly construed it as a request for promotion and rejected the same.

3 Per contra, the respondents have stated that while calling the candidates for verification of certificates by Annexure A1, the details of posts against which they were being considered, whether Gr. C or D were not mentioned. Compassionate appointments are given to tide over the immediate crisis in the family and if the applicant wanted he could have refused to join the post. Refusal of the appointment by one individual does not give another candidate any claim to the post once he has already accepted and had been appointed to another post. The respondents rely on the Supreme Court judgement in JT 1994 3 SC 525 and JT 1994 2 SC 183 on this issue. It has also been submitted that in the Annexure A4 representation dated 21.9.2005, the applicant is seeking promotion to the post of counter clerk and according to the rules he was not eligible as only Bearer, Coffeemaker with 6 years experience can be promoted to that post. Moreover as per guidelines in DOP&T OM No 14014/6/ 94-Estt-D dated 9.10.98 which reads as under, his case has been rightly rejected:

" When a person has been appointed on compassionate grounds to a particular post,a) the set of circumstances, which led to such appointment, should deem to have ceased to exist. Thereafter he/she should strive to in his/her career like his/her colleagues for future advancement and any request for

appointment to any higher post on consideration of compassion should invariably be rejected. b) an appointment made on compassionate grounds cannot be transferred to any other person and any request for the same on considerations of compassion should invariably be rejected."

4 In the rejoinder, the applicant has pointed out the case of one Sri Satyanarayana at Sl. No 2 in the A1 order who has been subsequently appointed as a driver. He has further pointed out that the post of Sweeper in the canteen is not a feeder category for any post and the applicant would have to retire as a sweeper only. If he is at least treated as a Sepoy he will have future promotional chances. It is also stated that in the service Book his designation is shown as a Washboy and his payslip is also made with the same designation. There are several vacancies in the Sepoy category according to him and he could be considered for any one of these posts.

5 Arguments were heard.

6 It is admitted that the applicant had been appointed as a sweeper along with five other persons on compassionate grounds and that the incumbents were appointed to various posts on the basis of available vacancies and the priority accorded to their cases under the scheme for compassionate appointments. Whether due to dire necessity or otherwise the applicant had accepted the appointment as sweeper and joined in 2003 itself. One of the grounds taken by the applicant is that another individual who had been given the post of Counter Clerk along with him did not join the post and therefore he could have been appointed to the post. The fact that another

individual declined the post later cannot give any claim to the applicant for that post after a lapse of 4 years. Had it been made immediately when the crisis situation was subsisting , perhaps it could have been considered, though no legal right would accrue even in such circumstances. The respondents acted well within the rules and instructions and the law laid down by the Apex court. which has repeatedly emphasized the point that compassion cannot be continued eternally and such appointments should be only made for mitigating the immediate distress of the family. Hence the applicant's prayers for appointment as counter clerk on compassionate grounds based on his higher qualifications would amount to a reconsideration of his earlier appointment and such a review is not provided for in the Scheme, on the other hand the guidelines extracted above strictly prohibits such reopening of the case. And as such has to be rejected only. The respondents have explained why his claim for promotion also could not be considered as the post he is holding is not a feeder category to the post of counter clerk. The applicant's representation clearly states that he is requesting for a promotion , though he has denied it in the OA and has prayed for a change of post. On both counts his prayers have to be rejected.

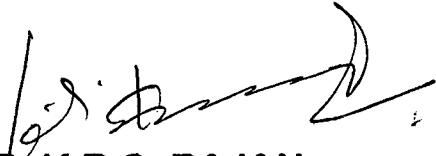
7 OA is therefore dismissed. However, we would like to observe with reference to his averments in the rejoinder which have not been rebutted by the respondents, viz:-

- (1) Sl. No 2 appointed along with him could change his post to that of Driver,

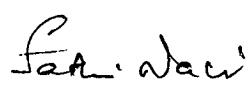
(2) if he remains in the post of Sweeper he cannot aspire for any advancement in his career and

(3) that his designation is wrongly shown in his service book, though they do not fall within the purview of this OA are aspects which the respondents may look into for redressal of his grievances within the ambit of the rules.

Dated 6.7.2007



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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