

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 178 & 195 of 1990
~~KAXXKXK~~

DATE OF DECISION 15-5-1990

PN Sudarsanan & another - Applicants (In OA-178/90)

AC Antony Applicant (s) (In OA-195/90)

Mr MR Rajendran Nair & Mr TR Rajagopal (in OA 178/90)

M/s K Ramakumar, VR Ramachandran Nair & Roy Abraham
Advocate for the Applicant (s) (In OA-195/90)

Versus

Union of India & others Respondent (s)

Mr NN Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

Since the question of law and facts involved ⁱⁿ both these cases are similar and as the respondents in OA-195/90 ^{1 & 2} who are respondents ⁱⁿ OA-178/90 have stated that the reply statement filed by them in OA-178/90 may be treated as their reply in OA-195/90 also, these two cases are being heard and disposed of jointly. The applicants in both these applications have challenged the order dated 2.3.1990 of the Collector of Central Excise & Customs by which the applicants were found not suitable for posting at Air Customs Pool, Trivandrum. The facts of the cases necessary for their disposal can be briefly stated as follows.

2. The Government of India, Ministry of Finance/letter ^{issued}
F.No.A.11019/43/85/Ad.IV dated 24.1.1986 regarding the formation of Air Customs Pool at Trivandrum Airport. According to this letter, 75% of the posts in Air Pool at Trivandrum is to be manned by officers drawn from Collectorate of Central Excise, Cochin and the remaining 25% is to be filled up by deputation of officers from various Customs Offices failing which by Central Excise Officers belonging to other Collectorates. It was further provided that the selection of officers for Air Customs Pool is to be made in accordance with the Ministry's letters dated 22.2.1975, 31.1.1985, 1.2.1985 and 19.8.1985 etc. It was specifically provided that the tenure of these officers would not normally exceed 2 years. A proposal to draw a panel for deputation to the International Airport, Bombay, Delhi, Madras, Calcutta & Trivandrum was intimated by a letter dated 2.1.1990. It was stated that Superintendents with 3 years service as on 31.12.1989 would be eligible to apply for deputation. The concerned Assistant Collectors/Additional Collectors etc. were requested to ascertain the willingness of eligible Superintendents of Central Excise and forward the names together with their ^{in the} bio-data/proforma given on or before 22.1.1990. The applicants in both these cases who were Superintendents of Central Excise submitted their willingness. The rank of the applicant in OA-178/90 in the seniority list of Superintendents of Central Excise was 51 as on 1.1.1988 and that of the applicant in

in
OA-195/90/the seniority list as on 1.1.1989 was 50. The rank of respondent 3 to 6 in OA-178/90 were 55, 60, 61 and 63 respectively. The second respondent without considering the claim of the applicants for consideration for posting in Air Customs Pool on the basis of his seniority posted the respondents 3 to 6 and another to Air Customs Pool, Trivandrum by impugned order dated 23.1.1990 at Annexure-V. The applicant in OA-178/90 filed OA-85/90 before this Tribunal. This Tribunal found that the first applicant in this application was excluded solely on the ground that he had less than 3 years service before retirement which is unjustified and allowed the application directing the respondents 1&2 to consider the case of the applicant for a posting in the Air Customs Pool by a review committee as on 22.1.1990 irrespective of the fact of his having less than 3 years service and that he should be posted there if he is otherwise found suitable by final order dated 2.2.1990. Similarly when one Krishnan Nambiar who was junior to the applicant in OA-195/90 was posted in the Air Customs Pool at Trivandrum ignoring the rightful claim of the applicant he filed OA-71/90 before this Tribunal. This application was also disposed by the Tribunal along with OA-85/90 directing the respondents to reconsider the whole matter. Thereafter the order dated 2.3.1990 which is impugned in both these cases was issued by the second respondent wherein it was stated that the selection committee

which met on 27.2.1990 considered the cases of these 2 applicants as on 22.1.1990 as directed by this Tribunal in OA-71/90 and 85/90 and that the committee found that the applicants were not suitable for posting at the Air Customs Pool, Trivandrum. The applicants have averred in both these applications that as the selection is on the basis of seniority-cum-fitness and as both the applicants have meritorious service and unblemished service records, their non-selection amounts to hostile discrimination. The applicants pray that the respondents 1&2 may be directed to consider the case of the applicant for posting at Air Customs Pool, Trivandrum in due turn in accordance with law. It has also been averred in the application in OA-178/90 that it has been specifically provided for in the Government letter dated 22.2.1975 that there would be no service restriction in respect of officers from their own cadres whom the Collectors may like to post at the Airports and that in case of officers from other formations the method of selection would continue to be on the recommendations of a selection committee consisting of a Collector of Airport concerned/Chairman, Director of Training or Director of Inspection, Additional Collector or the Deputy Collector incharge of Airport and the nearest Collector of Central Excise. According to the applicants in these cases, their non-selection while persons junior to them have been selected and posted to the Air Customs Pool, Trivandrum is arbitrary and illegal.

3. The respondents 1&2 in OA-178/90 who are the respondents in OA-195/90 have filed a reply statement in OA-178/90. The learned counsel for these respondents have indicated that as these 2 cases are similar, the contentions raised in this reply statement can be taken as the contentions of the respondents in OA-195/90 and that the respondents did not intent to file a separate reply statement there. In the reply statement, the respondents have contended that they have scrupulously complied with the directions contained in the orders of the Tribunal in OA-71/90 and 85/90 and that the applicants in these 2 cases were not posted in the Air Customs Pool because the committee did not find them suitable for such posting. It has been contended again that the guiding principle in selection is seniority-cum-fitness, fitness being decided on the basis of qualities such as integrity, quality and of patience and courteousness etc./ on the basis of CCR gradings and performance of individual officers gathered by direct and indirect knowledge and information the applicants had been adjudged^{as}/not suitable for the posting and therefore the applicants have no legitimate grievance.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. Annexure-II is the Government letter F.No.A-11013/C/34/72-Ad.IV dated 22.2.1975. In paragraph 4.2 of this letter, it has been stated as follows:

"With a view to remove the rigidity that exists at present in the functioning of the Airpool and to enable the Collector of Customs/Central Excise

concerned with the administration of the Airports to bring in the available taken from their own cadres into the Airports freely it has been decided that no tenure need be observed for the officers in their own cadres selected for posting to the Airports under their jurisdiction. The Collectors administering the Airports at Bombay, Calcutta and Madras will be free to choose officers belonging to their Custom Houses whom they consider it for posting in the International Airports and to change them as and when necessary in the same manner as they do in respect of other formations in their Custom Houses. In the case of Palam Airport(Delhi) in respect of which Delhi and Chandigarh Central Excise Collectorates have a common cadre, while the initial selection of officers belonging to the common cadre for posting to Palam Airport will be made jointly by the two Collectors, the Collector of Customs and Central Excise, Delhi will be free to shift from the Airport to another post any person who is not upto the mark and post a substitute in his place from among the list of officers prepared on the basis of joint selection. There will be no service restriction in respect of officers from their own cadres whom the Collectors may like to post at the Airports. It would however be necessary to ensure that the officers do not remain at the Airport for more than 3 years at a strata in the absence of any special circumstances".

Sub para 3 in para 4 reads as follows:

"The initial selection of officers from other formation will continue to be made on the recommendation of a selection committee consisting of (a) The Collector of the Airport concerned/Chairman, (b) Director of Training or Director of Inspection(Customs & Central Excise), (c)Additional Collector or the Deputy Collector incharge of the Airport and (d) the nearest Collector of Central Excise. The Selection Committee will, after making a preliminary weeding out of the optees, interview the candidates and subject them to viva-voce test and thereafter will prepare a panel on the basis of their performance in the interview and their C.C.Rolls. In making selections, the Committee should lay stress on experience, integrity, and qualities of patience and courteousness for handling international passengers".

The learned counsel for the applicant argued that the method of selection mentioned in sub-para 3 in para-4 of Annexure-II is in relation to outside formations and as per the instructions contained in sub para.2 in para-4 of Annexure-II, the method of selection would be on the basis of seniority-cum-fitness in the case of officials belonging to the Cochin Collectorate of Customs and Central Excise. This argument of the learned

counsel for the applicant is ^{virtually} admitted in paragraph 11 of the reply statement. Paragraph 11 of the reply statement reads as follows:

"As regards para 4(12) it is submitted that the letter dated 17.11.1984 states that due consideration will be given to the suggestions made by the Association. But that does not mean that posting will be done strictly on the basis of seniority. The guiding principle in this selection is seniority-cum-fitness, fitness decided on the basis of qualities such as integrity, quality of patience and courteousness, etc."

A copy of the letter dated 17.11.1984 referred to in paragraph 11 of the reply statement is at Annexure-IX. This letter was sent by the Collector of Central Excise, Cochin to the General Secretary of the Association of Central Excise, Kerala in reply to his letter dated 20.10.1984(Annexure-VIII), wherein it was requested that the posting of the Superintendents in the Trivandrum Airport may be done according to seniority. It was stated in this letter(Annexure-IX) that the suggestion made in Annexure-VIII letter would be given due consideration at a time of posting of Superintendents to Trivandrum Airport. In paragraph 14 of the reply statement again it has been contended that the selection or posting to the Air Customs Pool was on the basis of seniority-cum-suitability and the norms to be considered in deciding the suitability were:

- i) the officers should have minimum 3 years of service as Superintendent as on 31.12.1989;
- ii) the officers should not have been transferred out of the Airport on administrative grounds;
- iii) if the officer has worked in any Airport previously he should have completed at least 2 years as cooling

off period on their return from the Airport.

iv) officers with Vigilance or non-vigilance case pending should not be posted to Airport.

v) Assessment of overall performance.

Norm(v) includes C.C.R. gradings and suitability based on other qualifications such as experience, integrity and qualities of patience and courteousness for handling international passengers. So admittedly the selection is to be made on the basis of seniority-cum-fitness. The learned Senior Central Government Standing Counsel has made available for our perusal the comparative study of C.C.R. gradings for 5 years 1984 to 1988-89 in the case of the applicants in these 2 cases and the respondents 3 to 6 in OA-178/90. The CCR After dossiers of these persons were also made available. / Carefully going through these documents, we are not in a position to find anything adverse which would render either of the applicants unfit for any posting. Since the selection is on the basis of seniority-cum-fitness as repeatedly admitted in the reply statement of the respondents that due weightage will have to be given to persons who are seniors. That means that /even if in the comparative gradings some persons lower down have obtained better gradings, senior persons cannot be unless they are rejected as unfit. ✓ superceded. In this case we find that both the applicants though were considered for posting in the Air Customs Pool it appears that as directed by this Tribunal in OA-71/90 and 85/90, /their claims have not been properly considered. It appears that

persons who have been juniors to the applicant have ^{been} preferred for posting in the Air Customs Pool and the applicants have been found to be not suitable for posting there, while a very careful scrutiny of the CCR does not reveal why and how they were found to be unsuitable. In the reply statement at paragraph 14 it has been stated as follows:

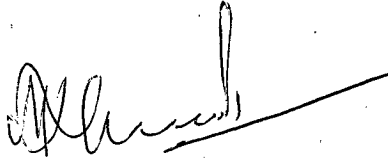
"...The Committee consisting of four senior officers including the Head of the Department have assessed the suitability of the officers not only based on records; but also based on the performance of the individual officers as gathered through direct/indirect knowledge/information"

The merit of an officer can well be determined with reference to his CCR because the proforma in which the C.R. is written provides for assessment of every quality. Therefore the method of assessment of qualities not based on the entries in CCR but based on information direct and indirect which are not reflected in any records would give ~~room~~ ^{room} for a lot of arbitrariness. Therefore the procedure said to have been adopted by the Committee as stated by the respondents in their reply statement in taking into account information received direct and indirect which are not ~~borne out by~~ ^{borne out by} records for deciding the suitability of officers cannot be sustained. Therefore we are convinced that the respondents 1&2 have not given a proper consideration to the case of the applicants for their posting in the Air Customs Pool though they have in the impugned orders stated that the applicants' cases have been considered. The learned counsel for the respondents argued that the applicants in these 2 cases

cannot be considered towards the 75% of the vacancies from the cadre of the second respondent as the selection was towards 25% of other formations. But since the applicants belonged to the cadre of the Collectorate/^{of} Customs, Cochin they can be considered only/^{as} officers belonging to that ~~Collectorate~~ and not belonging to the other formations and therefore in that view also as per the Government instructions contained in Annexure-II the selection of officers from the staff of the second respondent can be only on the basis of seniority-cum-fitness and not on the basis of a competitive assessment of merit. Further as it is admitted in the reply statement that the applicants were considered for selection on the basis of seniority-cum-fitness, there is no merit in this argument raised by the learned counsel for the respondents.

5. In view of what is stated in the forgoing paragraph, we are of the view that the respondents 1&2 having not considered the cases of the applicant in the right perspective have to be directed to consider the case of the applicants' suitability for posting in the Air Customs Pool, Trivandrum afresh as on 23.1.1990. In the result we allow the applications DA-178/90 and 195/90 and direct the respondents to consider the case of the applicants for posting at Air Customs Pool, Trivandrum by a Review Committee as on 23.1.1990 on the basis of their seniority-cum-fitness based on/^{service} records without taking into consideration/^{of} any indirect information not reflected in character rolls or other records and to post them at the

Air Customs Pool, Trivandrum if they are found suitable for such posting in terms of what is stated above on the basis of their seniority and fitness. Action on the above lines should be completed within 3 weeks from the date of communication of this order. There will be no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER



(SP MUKERJI)
VICE CHAIRMAN

15-5-1990

trs

6.7.90

C.C.P.No.29/90

Shri M.R.Rajendran Nair-for petitioners..
Shri NN Sugunapalan, SCGSC.

SPM & AVH

We have heard the arguments of the learned counsel for both the parties on the C.C.P. in which it has been alleged that our order dated 15.5.1990 passed in O.A.178/90 and O.A.195/90 and further clarified by our order dated 15.6.90 in M.P.447/90 have not been complied with by the respondents. It may be recalled that in our order dated 15.6.90 we had directed the Collector of Central Excise to function as ^{the} review D.P.C. and consider the cases of the applicants for posting at the International Airport at Trivandrum in implementation of our judgment dated 15.5.90. In our judgment the various criteria for selection on the basis of seniority-cum-fitness were also referred to.

The Sr.Central Govt.Standing counsel Shri N.N. Sugunapalan ~~who~~ ^{is in} was good enough to produce before us the relevant file ^{of} which the Collector in implementation of our order dated 15.6.90 ^{recorded a detailed note} ~~passed an order~~ on 3.7.90 declaring that the applicants to be "not fit enough" for posting at the International Airport at Trivandrum. We have gone through the note of the Collector and find that the Collector does not appear to have complied with our judgment in letter and spirit. For instance when the Selection had to be made on the basis of Seniority-cum-fitness the Collector has not referred to the fact of the applicants being senior to others who have been posted at the International Airport. The question of seniority has therefore, been completely ignored in the Collector's mind. Further, the note indicates that instead of reviewing the suitability of the two applicants before us as directed by us in our order dated 15.6.90 the Collector has ~~trans-~~ ^{indulging into}gressed our order by a comparative assessment of the applicants' suitability ^{is a} ~~with~~ the suitability of his juniors who have been named in the Collector's note. He has ~~further~~ ^{finally} indicated that the juniors were 'more suitable' than the applicants, ^{This} ~~which case to~~ show that the Collector did not declare ^{that} or find the applicants to be not suitable at all but ^{the} the applicants were found to be less suitable than some of their juniors. This to our mind is negation of the spirit and of our judgment and our order dated 15.6.90. We had made it clear that if the applicants are found ~~suitable~~ ^{not} 'per se' as distinguished from comparative suitability, they have a right to be posted at the International Airport at Trivandrum on the basis of their seniority, that is ^{by} ~~for~~ any junior is ~~found to~~ posted there.

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In the facts and circumstances we ^{are} inclined to find that our judgment and order have not been substantially complied with. We, however ^{do} not propose to pass any final order on the C.C.P and as ^{suggested} submitted by the learned counsel for the respondents, we are prepared to ^{allow} accept a statement to be filed by the Collector Central Excise on the C.C.P.

The learned counsel for the respondents undertakes to file a statement by 10.7.90 with a copy to the learned counsel for the applicants. We, however, direct that both the applicants should be posted provisionally at the Trivandrum Airport forthwith subject to further directions that we propose to give on the C.C.P.

A copy of this order should ^{be} sent to the Collector, Central Excise by a special messenger immediately. A copy of this order may also be given to the learned counsel for the petitioner by hand.

List for further directions on 10.7.90.

Shilpi
6.7.90

copy of order
issued on the
petition on 6.7.90
to

10.7.90

SPM & AVH

Miss. Asha PV
Mr. NN Sugunapalan-SCGSC.

The learned counsel for the respondents has filed a statement with a copy of the order dated 9.7.90 in accordance with which the two applicants have since been posted at the Air Customs Pool, Trivandrum in compliance with the order of this Tribunal. However, no statement has been filed by the Collector in reply to the CCP. The learned counsel for the respondents seeks some time to file the same. List for further directions on the CCP on 16.7.90.

Shilpi
10.7.90

Reply filed on
10.7.90
to

Statement filed
by Resp. on 12.7.90
to
12/7

16.7.90

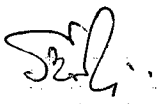
C.C.P.29/90
in
O.A.No.178/90

Shri NN Sugunapalan-SCGSC.

SPM & AVH

The Collector of Central Excise has since filed a statement dated 11.7.90 appologising ^{and giving reasons} for non-compliance of our judgment. Since the order of posting of the applicant has already been passed in compliance to our judgment, we see no reason to continue with the C.C.P. which is closed and notice of contempt discharged.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

16.7.90