

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 209/91
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DATE OF DECISION 10.4.92

VK Ayyappan

Applicant (s)

Mr MR Rajendran Nair

Advocate for the Applicant (s)

Versus
The Collector of Customs,
Kochi-9 and others

Respondent (s)

Mr NN Sugunapalan, SCGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. NV Krishnan, Administrative Member

and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Sh NV Krishnan, A.M

The applicant is an employee under the Collector of Customs, the first respondent. He is a permanent UD Clerk as evidenced by the Annexure-II seniority list. He was directed on 30.12.88 to furnish his willingness or otherwise for consideration for promotion to the grade of Examiner (Annexure-III). He expressed his willingness on time. In the meanwhile, he was promoted on a regular basis to officiate as Deputy Office Superintendent-Level.II with effect from 18.7.89 by the Annexure-I order of the Respondent-1. However, so far, no action has been taken to fill up the vacancy of Examiners in the promotion quota though the direct quota of appointment of Examiners has already been filled up.

2 It is alleged by him that after his officiating promotion as Deputy Office Superintendent Level-II, his juniors were directed to express their willingness for being considered for the post of Preventive Officers. The applicant's contention is that he should not have been excluded from consideration because he still had his lien on the post of UD Clerk.

3 It is alleged that the practice used to be that when promotions are to be made for the post of Examiners/ Preventive Officers, the persons promoted as officiating DOS Level-II were notionally reverted as UDCs and considered. However, such consideration was not given to him now because of the Annexure IV circular dt. 10.6.88 issued by the Ministry of Finance which states as follows:

" A point has been raised by a Collector of Central Excise as to whether UDCs who have been promoted to the grade of Dy. Office Superintendent Level-II can be reverted to their substantive grade of UDC, at their own request, for consideration of their promotion to other grades such as Inspector of Central Excise etc. The matter has been considered in consultation with Department of Personnel and Training and they have observed that when the individuals have already accepted the promotion, their reversion to the lower post is not in order as it would create administrative problems in filling up the posts. Department of Personnel and Training have, therefore, advised that reversion of the persons working in Dy. Office Supdt. Level-II to UDCs simply for the purpose of considering them for promotion to other posts is not in order. The advice of Department of Personnel and Training may be noted for compliance in future."

4 The applicant alleges that the Annexure-IV circular was ^{er}neither circulated nor made known to him when he was promoted as DOS Level-II by the Annexure-I order.

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He should have been given an opportunity to revert, if there was a change in the past practice not made known to him. He contends that Annexure-IV cannot stand in the way of his being considered for promotion because he is a substantive only in the post of UD Clerk and hence his lien is on that post only. He should, therefore, be treated only as a UD Clerk for the purpose of considering his case for further promotion.

5 When a representation dated 4.5.90 was made by him in this behalf, he was informed by the Respondent-1 (Annexure-V) that his request for consideration for promotion to the grade of Examiner could not be acceded to. It is in these circumstances, that the applicant has prayed for the following reliefs:

"(i) To declare that applicant was eligible to be considered for the promotion to the post of Examiner/Preventive Officers by virtue of his seniority and eligibility as on the date of occurrence of vacancy, and to direct the respondent to consider the case of the applicant for promotion with reference to the state of affairs as on the date of occurrence of vacancy and to promote the applicant as Examiner/Preventive Officer with retrospective effect from a date on which he would have been promoted had he been so considered.

"(ii) To set aside Annexure-IV and Annexure V."

6 The respondents have filed a reply denying that any relief is due to the applicant. It is contended that the Annexure IV letter was made known to the office staff of the Customs House. In this connection the ~~following~~ respondents state as follows:

u "5. The averments contained in para 4(5) of the O.A. are also not fully correct. The Ministry's letter F.No.A 32011/10/88-Ad.IIIA dated 10.6.1988 regarding the policy to be followed where a person

after getting promotion to a higher post seeks reversion has been incorporated in CBEC Digest of July, 1988 and the same has been circulated in all the sections of the Customs House. It is also pertinent to state that Shri TS Madhusoodhanan, UDC, who was promoted as Dy. Office Superintendent Level-II prior to Shri VK Ayyappan against the reserved vacancy, declined promotion to the cadre of Dy. Office Supdt. Level-II based on the instructions dated 10.6.88. The applicant is also aware of this development. Therefore, he cannot plead ignorance now, at this belated stage having enjoyed the promotion benefits willingly."

7 The applicant accepted the promotion as Deputy Office Superintendent, Level-II with effect from 18.7.89 which was declined by his senior TS Madhusoodhanan. It is, no doubt, true that the applicant's willingness in regard to being considered for promotion for the post of Examiner was obtained by the letter dated 30.12.88 (Annexure-III). This was, however, for consideration of the DPC which was to meet then. It is stated that a number of representations had been made against the Annexure-IV letter dated 10.6.88 and hence the DPC could not meet in time. Their representations were sent to the Ministry who advised by its letter dated 29.11.90 (Annexure R2) that the representations - including one of the applicant - should be rejected. Hence, the DPC meeting for the purpose of considering the promotion of Examiner had to be convened only subsequently. It is, in the meanwhile, that the applicant, knowing fully well about the Annexure AIV circular, accepted promotion as DOS Level-II, though it was declined by his senior Sh Madhusoodhanan. In the circumstances, the respondents contend that the application is without any force and it should be rejected.

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8 We have heard the parties and perused the records. The learned counsel for the applicant submits that the Annexure IV is arbitrary and contrary to the provisions of the Recruitment Rules and cannot be allowed to stand in the way of being considered for promotion as Examiner.

9 On our directions, the learned counsel for the respondents produced the Customs Department (Group-C) Recruitment Rules, 1979. The rules are clear that the post of UDC is a feeder category separately for three posts, namely, DOS Level-II, Preventive Officer (Ordinary Grade) and Examiner (Ordinary Grade). Of these, the post of DOS Level-II is in a lower pay scale (Rs 425-700 pre-revised pay scale) while the posts of Examiner (Ordinary Grade) and Preventive Officer (Ordinary Grade) are in the same higher pay scale of Rs 425-800. Therefore, UDCs always preferred to get promoted to the posts of Preventive Officers or Examiners and considered promotion as DOS Level-II as a stop gap arrangement.

10 It appears that in the past there was no restriction on considering a UDC already promoted as DOS Level-II for promotion as Examiner or Preventive Officer. For this purpose, the persons were treated to have been reverted to the post of UDC on a notional basis. It is this practice which has been stopped by the Annexure IV circular of the Ministry of Finance.

11 The main purpose of Annexure-IV seems to be to ensure that if a UDC was interested only in promotion

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to the post of Examiner or Preventive Officer, then he should express his willingness for that purpose and be prepared to wait till a chance come his way. He could not be promoted as DOS Level-II as a stop gap arrangement. Thus the earlier practice which gave the best of of both the worlds was stopped by Annexure IV. As a result, only those UDCs who are prepared to work as DOS and seek further promotion in that cadre and forgo claims for promotion as Examiner/Preventive Officer were considered for such promotion.

12 The learned counsel for the applicant contends that Annexure IV is contrary to the Recruitment Rule, and cannot be enforced. We have considered this argument. ~~xxx~~
~~xxxxxxxxxxxxxxxxxxxxxxxx~~ The Recruitment Rules are silent in regard to this matter. The Rules merely state that UDC is feeder category for three different kinds of posts. The Annexure IV instruction merely fills the gap to clarify that if one is promoted as DOS Level-II, one cannot be considered ^{later} for promotion as Examiner/Preventive Officer. We are of the view that the Annexure IV cannot be assailed on the ground that it is contrary to the l

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/ Rules because it is only clarifactory and not contradictory.

13 The learned counsel for the applicant states that as his lien is still as a UDC, he has a right to be considered for promotion. His having a lien has nothing to do with the matter. UDC with 5 years' service are eligible for promotion. DOS Level-II is not a feeder category for the post of Examiner/Preventive Officer. The lien on the post of UDC will come into play, when for

some reason - like abolition of post, return of senior ^{or} from the post of DOS-II. from deputation etc. - he has to be reverted. In that case as he has a lien on the UDC, he will be reverted to that post.


14 It is clear from the facts brought out in the reply of the respondents that the applicant was fully aware of the Annexure IV letter of the Ministry of Finance. He accepted the promotion as DOS Level-II ^{or} the restrictions on reversion knowing fully well/as mentioned in Annexure-IV. It does not lie in his mouth to state that he should be considered for promotion to the post of Examiner. If he wanted to be considered for the post, he should have rejected the offer of promotion to the post of DOS Level-II in the manner as his immediate senior Madhusoodhanan is stated to have declined that offer.


15 The applicant claims that the post of Examiner had fallen vacant long before he was promoted as Dos Level-II by the Annexure-I order. Had the case been considered then he would have been promoted as Examiner. The respondents state that this argument is hollow and meaningless. By the time vacancies of Examiner arose, Annexure IV had already been issued. Promotion to the post of Examiner was delayed because many persons had represented against the Annexure IV ^{order} and those representations were finally disposed of by the Annexure R2 letter dated 29.11.90. Secondly, having become aware of Annexure AIV the applicant could have declined promotion as DOS Level-II. Lastly, it is not as if the applicant was the seniormost person who would have been considered had he not

became DOS Level-II. Others senior to him were also there e.g., Madhusoodhanan who declined promotion as UDC. We agree that this argument is untenable.

16. In the circumstance, we are of the view that the consideration of the applicant for the post of Preventive Officer/Examiner is barred by Annexure IV which has been legally passed by the Ministry. In the circumstance, we find no merit in this application which is dismissed.

17 There will be no order as to costs.


(N Dharmadan)
Judicial Member
10.4.92


(NV Krishnan)
Administrative Member
10/4/92