

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A 24/92,25/92, 26/92,27/92,28/92,29/92 & 30/92

DATE OF DECISION : 21.1.92

A.Ramachandran	Applicant in O.A.24/92
M.O.Varghese	Applicant in O.A. 25/92
B.Rajan	Applicant in O.A. 26/92
Xavierkutty Joseph	Applicant in O.A. 27/92
T.L.Thomas	Applicant in O.A 28/92
S.K.Dineshan	Applicant in O.A 29/92
K.N.Sadanandan	Applicant in O.A 30/92

vs.

The Collector of Customs, Custom House,
Cochin-9 and 2 others.

... Identical respondents in all
the applications.

Mr.M.R.Rajendran Nair

Advocate for the Applicants
in all the O.As.

Mr.N.N.Sugunapalan,SCGSC

Advocate for the Respondents
in all the O.As.

C O R A M

THE HON'BLE MR.S.P.MUKERJI, VICE CHAIRMAN

THE HON'BLE MR.A.V.HARIDASAN,JUDICIAL MEMBER

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

J U D G M E N T

(Hon'ble Shri S.P.Mukerji,Vice Chairman)

Since common questions of law, facts and reliefs are involved in the seven applications mentioned above, they are being disposed of by a common order as follows.

2. The applicants in the seven applications mentioned above who have till recently been working as Preventive Officers in the Customs House purely on an ad-hoc basis moved ^{the first} ~~this~~ application dated 6th January 1992 ^{and others} ~~praying~~ that the impugned order dated 17th December,1991 ^(Annexure I) issued by the Under Secretary, Central Board of Excise and Customs directing the Collector of Customs to revert the excess number of ten ad-hoc

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promotees as per the observations of the Tribunal and not to accommodate them against the direct recruitment vacancies and that no ad-hoc promotions against the direct recruitment vacancies should be resorted to ^{be set aside.} They have also challenged the impugned order dated 4.1.92 at Annexure R1(b) by which six of the seven applicants before us were reverted as Upper Division Clerks with immediate effect. Their further prayer is that they should be declared to be not liable to be reverted on the basis of Annexure-I. The brief facts of the case are as follows.

3. The applicants who have been working as UDCs/Stenographers in the Cochin Customs House had been promoted as Preventive Officers on an ad-hoc basis and have been continuously working as such since 1989-90. There were as many as 31 such ad-hoc promotees at that time. These promotions were made on an ad-hoc basis against direct recruitment quota as there was a ban on direct recruitment but since the work of prevention of smuggling and tax evasion had to be carried out, ad-hoc promotions were made in excess of the promotion quota. 75% of the regular strength of Preventive Officers in the Cochin Customs House is to be filled up by direct recruitment and 25% by promotion. When the respondents initiated action to fill up the direct recruitment quota vacancies through direct recruitment, the ad-hoc promotees including some of the applicants before us moved this Tribunal in OA 791/90 and OA 800/90 praying that certain posts of Preventive Officers should not be reckoned within the sanctioned strength for ^{computing} ~~reckoning~~ the direct recruitment quota and that the applicants should be declared to be not liable to be reverted except for non-availability of vacancies. These two applications were disposed of by this Bench by a common judgment ^{at Annexure R1(a)} dated 30th August, 1991, the operative portion of which reads as follows:-

" From the above it is crystal clear that the number of direct recruits actually in position (53) is far less than what the direct recruitment quota (77) would warrant. The total number of promotee (38 regular + 31 adhoc) appears to be quite in excess of what the promotion quota and adhoc posts (26 promotion quota and 22 temporary/adhoc) would warrant. In this context the application

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is allowed in part to the extent of the declaration that only the 79 regular posts, 14 posts of the Madras Airport and 10 posts of Cochin Export Processing Zone should be taken into account for reckoning the direct recruitment quota and that the number of direct recruits in position held against the Cochin Customs House should not at any time exceed 77 unless further exclusive commitment for filling up deputation posts from the Cochin Customs House is available in respect of the Airports at Delhi, Trivandrum and other participating Organisations. It goes without saying that any reversion of promotees if absolutely unavoidable will be made in accordance with law inter alia on the principle of 'last come first go' and ensuring that regular promotees are not reverted so long as ad hoc promotees are in position. We also commend to the respondents to consider providing a deputation reserve in the cadre of Preventive Officers at Cochin Customs House based on commitments by different Organisations to accept on deputation at any point of time, specified numbers of officers exclusively from this cadre, in which case alone, in addition to the regular posts, the entire deputation reserve can be taken into account for calculating the direct recruitment and promotion quota. The question of having a training reserve and leave reserve on a regular basis as part and parcel of the total cadre strength for computing the quotas should also be considered simultaneously to avoid further litigation in the reckoning of the promotion and direct recruitment quotas."

It appears that after the judgment was pronounced the Collector of Customs in order to meet the requirement of Preventive Officers who were in short supply because of paucity of direct recruits, in his letters of 9th October 1991 and 20th of November 1991 proposed further ad-hoc promotions as Preventive Officers. In reply he received the impugned letter dated 17th December 1991(Annexure-1) which reads as follows.

" I am directed to refer to your letter No.S.8/1/80-Estt.Cus. dated 9th October, 1991 and subsequent letter No.C.16/34/90-Estt.Cus. dated 20.11.1991 regarding promotion to the cadre of Preventive Officer on ad-hoc basis and O.A.No.791/90.

2. Your proposal has been examined at length. You are advised as under:

- i) revert the excess number of ad-hoc promotees (ten) as per the observation of the CAT.

- ii) not to accommodate them against Direct Recruit vacancies;
- iii) no ad-hoc promotions against Direct Recruit vacancies should, in fact, be resorted to; and

3. Action taken may please be intimated to this Board urgently."

Apprehending their reversion the applicants moved these seven applications on 6th January 1992 challenging the said order. It may be noted that in that application originally they did not challenge the impugned order dated 4.1.92 at Annexure R1(b) by which they were reverted as UDCs. According to them this order dated 4.1.92 was actually not issued on 4.1.92 which was a Saturday being closed day and had not been served on them till 6.1.92 when they moved these applications. Be that as it may, when these applications were taken up on 6.1.92 when the learned counsel for the respondents was also present, an order of status-quo was passed till 8.1.92 for admission. On 8.1.92 the applications were admitted and the interim order was extended till 15.1.92 for final hearing. In the meantime the respondents had filed a reply to the O.A. on 7.1.92 enclosing a copy of the order of reversion dated 4.1.92 at Annexure R1(b). On 10.1.92 the learned counsel for the applicants moved the Miscellaneous Petition No.70/92 drawing our attention to the order of reversion dated 4.1.92 at Annexure R1(b) alleging that the order of reversion had not been served on them on 4.1.92 and their representation dated 9.1.92 requesting to permit them to function as Preventive Officer was not accepted. On the other hand on 9.1.92 Office Orders No.8/92 dated 6.1.92 and Order No.9/92 dated 6.1.92 giving them posting as U.D.C were served on them. They allege that the reversion order dated 4.1.92 being a Saturday and not a working day, was not served on them on that day, even though they were on duty till 6 p.m. on 4.1.92. The order was displayed on the notice board in the evening of 6.1.92. All these show^s that this order of reversion was ante-dated to frustrate the interim order of status-quo passed on 6.1.92. Further, the daily posting sheets of the Preventive Officers for 5.1.92 and 6.1.92 included the names of the applicants^{also} which also shows that the order of reversion was ante-dated.

The applicants produced Office Order No.7/92 which was dated 7.1.92 at Annexure-E to show that their posting orders as U.D.C at Annexures C and D denoted as Office Order Nos.8 and 9 could not have been issued on 6.1.92 but were also ante-dated, having been issued ^(as the serial number of the office orders show) subsequent to Office Order No.7/92 dated 7.1.92. They have also stated that the first respondent having sent a proposal for filling up some vacancies of Preventive Officers cannot be heard to say in the counter affidavit that he would be able to meet the operational needs with the present staff excluding the reverted officers.

4. In the counter affidavit filed by the respondents on 7th January 1992 they noted the finding of this Tribunal in the judgment dated 30.8.91 in O.A. 791/90 and O.A.800/90, that there is an excess of promotee officers in the cadre of Preventive Officers and that "they are liable to be reverted if it is absolutely necessary and unavoidable without disturbing the persons who are regularly promoted". They have ^{conceded} ~~stated~~ that 20 additional vacancies of Preventive Officers were sanctioned on Cadre Review in 1991 and there are as many as 50 vacancies of Preventive Officers in the direct recruitment quota. The total number of posts in the Cochin Customs House, therefore is 145 and the number of direct recruits actually in position has gone down from 53 to 42 as against their legitimate share of 92. The legitimate share of promotees works out to 53 ^(including 22 adhoc/temporary posts) against which there are as many as 63 promotees. Thus ten promotees are in excess. In order to fill up the vacancies in the direct recruitment posts, the Staff Selection Commission has indicated that the selected persons would be joining shortly. It is in this context that the impugned order was passed reverting ad-hoc promotees. The respondents have stated that the "Department will be able to meet the operational needs with the present staff excluding the reverted officers." They have stated the reversion of the applicants was absolutely necessary and it has no nexus with the over-time duty. They have further stated that the impugned order of reversion dated 4.1.92 was given effect to on 4.1.92 itself. Although orders were issued

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and despatched to the officers' residence, nobody was present to receive the same and ^{the} 4th being Saturday and 5th Sunday, the duties were re-assigned for those days. Ad-hoc promotees have no right to hold the posts.

5. In reply to the M.P. the respondents have stated that the assignment of duty was finalised for 5.1.92 and 6.1.92 before the issue of the reversion order, but no corrections were made to the duty posting sheets after 6.1.92. The assignment of duties of the applicants who had been reverted were cancelled consequent on the passing of the reversion order. None of the applicants served as Preventive Officers on 6.1.92, that 4.1.92 was a working day for the Preventive section even though it is a holiday and it is incorrect to state that the order was displayed on the Notice Board ^{only} on 6.1.92. They have stated that on 6.1.92 nobody reported for duty in the administrative section and posting orders No.8/92 and 9/92 were issued allotting the applicants to various sections of the Customs House, but none came on 6.1.92 to attend duties as U.D.Clerks. They have clarified that Annexure-E order No.7/92 was approved by the Collector on 3.1.92 itself but the Assistant Collector signed the order on 7.1.1992 when it was issued over the original office number of 6.1.92. The respondents have categorically stated that the reversion orders were passed for "implementing the decision given by the Tribunal in O.A.791/90 and O.A. 800/90"

6. In the rejoinder the applicants have stated that the judgment of the Tribunal in no manner warrants or mandates reversion of the applicants. On the other hand, the Tribunal specifically directed that reversions of promotees will be made only if absolutely unavoidable. They have reiterated that they were on duty upto 6 p.m. on 4.1.92 and no reversion order was even attempted to be served on them and 4.1.92 being not a working day for the office of the first respondent, no order could have been passed or despatched on 4.1.92 and that it was pre-dated. It was never served at the residence of the officers.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Our judgment dated 30th August 1991 in O.A.791/90 and O.A.800/90 at Annexure R1(a) nowhere

directed the respondents to revert the ad-hoc promotees immediately. The orders simply indicated that ^{while} ~~where~~ there is under-induction of direct recruits, there is over-induction of promotees including the ad-hoc promotees. The Tribunal fully appreciated the acute shortage of Preventive Officers in the Customs House which is a revenue earning department and recognised the need of intensifying preventive measures for curbing smuggling and customs evasion activities. It was in this light ^{that} ~~in~~ the operative portion of the judgment we made it clear that reversion of Preventive Officers in excess of the promotion quota should be made only if it is absolutely unavoidable. This contingency would have arisen if direct recruits had been inducted to fill up the direct recruitment quota vacancies which were being occupied by the ad-hoc promotees. From the records it is clear that such a contingency has not arisen. On the other hand, the number of direct recruits actually in position went down from 53 as indicated in the judgment to only 42 at present. Over and above that, the respondents by Cadre Review increased the number of Preventive Officers by 20 more posts which itself goes to show that the need to have more Preventive Officers for anti-smuggling operations ^{etc} ~~has~~ gone up. The position of number of posts of Preventive Officers in various categories and the number of officers actually in position in each category when the judgment dated 30.8.1991 was delivered and the present position would be clear from the following tabular statement:-

	Position as given in the judgment of 30.8.91			Position as at present		
	No.of posts	Officers in position	Shortfall of officers	No.of posts	Officers in position	Shortfall of officers
(75%) Direct recruits	77	53	24	92	42	50
(25%) Regular promotees	26	38	-12(excess)	31	32	-1(excess)
Adhoc/Temporary promotees	22	31	-9(excess)	22	31	-9(excess)
Total	125	122	3	145	105	40

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From the aforesaid tabular statement it is clear that in the recent past the short-fall in the availability of direct recruits has gone up from 24 to 50 whereas the overall shortage in Preventive Officers cadre has gone up from 3 to 40. In other words both in the direct recruitment quota as also in the total availability of Preventive Officers of all categories against the total requirement^{-the shortfall}, has gone up by two times and thirteen times respectively. In that context reverting the ad-hoc promotees would be absolutely contrary to the directions of the Tribunal and the public interest involved in manning the cadre of Preventive Officers to the hilt at this juncture where smuggling and customs evasion are in the upswing. The respondents have justified the impugned order of reversion exclusively by saying that "the reversions were ordered for implementing the decision given by the Hon'ble Tribunal in O.As No.791/90 and 800/90". As has been stated earlier the judgment² of the Tribunal in these two cases was only to restrict direct recruitment to the ceiling of the direct recruitment quota and to allow reversions when it was absolutely necessary and unavoidable through the induction of direct recruits. The two applications were filed by the ad-hoc promotees for restraining the respondents from over filling the direct recruitment quota and not for the reversions of the ad-hoc promotees when vacancies of Preventive Officers remain⁶ abegging. We are, therefore, fully convinced that the order of reversion which according to the respondents themselves is in implementation of our judgment and in no other ground, is wholly unwarranted and against public interest.

7. From the documents also it is clear that apart from misinterpreting our judgment to revert the applicants, the respondents showed unseemly haste in passing the impugned order^{at R₁(6) dated 4.1.92.}. We can detect circumstances in the issue of the impugned order which gives us a reasonable suspicion that the order of reversion was issued after we had passed the interim order on 6.1.92 and was given a date of 4.1.92 to frustrate the interim order. We have a number of grounds which makes us ~~to~~⁵

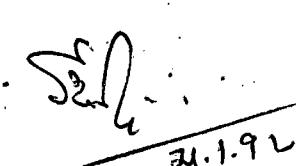
believe so. The Central Board of Excise and Customs had given the direction of reversion of excess number of ad-hoc promotees in their letter dated 17th December, 1991(Annexure-I). It must have reached the office of the Collector of Customs by 24th or at the latest by ^{the} 27th of December. If the respondents were in ^{such} a hurry, they could have easily issued the order of reversion of the applicants well before 31st of December. They did not do so. On the other hand the order of reversion at Ext.R1(b) was issued on 4.1.92 which was a closed Saturday ^{and} was said to have been despatched for service to the residences of the applicants when according to the applicants themselves they were on duty till 6 p.m. of 4.1.92. What was the need of ensuring that the order of reversion is served on the applicants at their residences on 4.1.92 and displayed on the Notice Board on 6.1.92 except to make our interim order dated 6.1.92 nugatory? The learned counsel for the respondents indicated that the order of reversion dated 4.1.92 was brought to the Court on 6.1.92 itself. There is nothing on record to this effect. The learned counsel could have filed a copy of the reversion order in the Court itself or moved us to bring it on record on 6.1.92 itself. Even if for the sake of argument, it is conceded that the order of reversion was brought in the Court on 6.1.92, that does not prove that it was issued on 4.1.92 or served on the applicants before the interim order was recorded. The further facts that the posting orders of the applicants i.e, Office Order Nos.8/92 and 9/92 were issued on 6.1.92 whereas posting order of Shri Pavithran which is numbered as Office Order of 7/92 was issued on 7.1.92 adds to our suspicion that even Office Orders No.8 and 9 have been issued on or after 7.1.92 but were pre-dated again to frustrate the interim order of the Tribunal dated 6.1.92. The fact that in the daily duty sheets for 5th and 6th of January 1992, the applicants names were included throws further doubt on the date of reversion order of the applicants being 4.1.92. If the reversion order had really been issued

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on 4.1.92 the applicants names who would already have been reverted as U.D.C. should not have figured in the duty chart of 5th and 6th of January, 1992.

8. In the conspectus of facts and circumstances we set aside the impugned order at Annexure R1(b) dated 4.1.92 as also the impugned order dated 17th December 1991 at Annexure-I as contrary to the directions of this Tribunal in O.A.791/90 and O.A.800/90 and not in conformity with public interest and suffering from malice in law. The respondents are directed to restore the applicants to their original assignment as ad-hoc Preventive Officers as if the impugned orders have not been passed. The reversion of ad-hoc promotee officers shall be effected only if there is absence of vacancies by the induction of direct recruits or abolition of posts, as the case may be or otherwise, only in accordance with law. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman