

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 25/2002

WEDNESDAY THIS THE 6th DAY OF OCTOBER, 2004

C O R A M

HON'BLE MR. A.V. HARIDSAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

V. S. Sasidharan
Preventive Officer
Customs House, Wellington Island
Cochin-9.

Applicant

By Advocate Mr. CSG Nair

Vs.

1. Union of India represented by the Secretary
Department of Revenue, Ministry of Finance
North Block, New Delhi-110 001
2. The Chairman
Central Board of Excise & Customs
North Block, New Delhi--110 001
3. Commissioner of Customs
Customs House, Willington Island
Cochin-9.
4. V. Bhagvathy Subramanian,
S/o Venkatarama Iyer
Preventive Officer, Customs HUse
Willington Island, Kochi
residing at 49/591-C, Gomathy Bhavan,
near Siva Temple, Puthukkalavattom
Elamakkaraa, Ernakulam Distt.
5. E. Vikas S/o P.M. Paviathran
Preventive Officer, Customs House
Willington Island, Kochi
Residing at Pavithram, NO. 48/1978-D
Elamakkara, Ernakulam Distt.
6. Imkong Toshi Ao S/o Imtisosang Ao
Preventive Officer, Customs house
Cochin-9 residing at H.No. 18/19990E
Pratheeksha Nagar, Kochupally
Thoppumpady, Ernakulam.
7. Reji Kumar G. S/o M. Gopalakrishnan Nair
Preventive Officer, Customs House
Cochin-9, residing at D-1 Galazy Regent
Little Flower Church Road,
Kaloor, Cochin.

Respondents.

By Advocate Mr. C. Rajendran SCGSC for R 1-3
Mr. T.C.G. Swamy for R 4 & 5
Mr. Shafik M.A. for R 6 & 7

The Application having been heard on 29.6.2004 the Tribunal delivered the following on 6.10.2004.

O R D E R

HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

The applicant V. S. Sasidharan made this Application while working as Preventive Officer in Customs House, Cochin, on adhoc basis. He had sought this single relief that he should be regularised in the post of Preventive Officer with effect from 28.10.1987 (i.e. the day on which he was appointed to the post on adhoc basis) with all consequential benefits. During the pendency of the Application before us, he has now been promoted on regular basis retrospectively with effect from 2.7.1997 by an office order dated 12.11.2002 issued by the Commissioner of Customs, Cochin. This order of regularisation (which includes the orders in respect of his seniors and juniors) has been subjected to the outcome of the present case. The only matter that subsists for adjudication therefore is whether the applicant should have been legitimately regularised w.e.f. 28.10.1987 in the post of Preventive Officer in the Customs Commissionerate, Cochin.

2. The undisputed facts of the case are that the applicant, who had joined service as a Lower Division Clerk on 18.8.1975 in the Customs House, Cochin was promoted as UDC in 1982 and was further promoted on adhoc basis as Preventive Officer (redesignated as Inspector) on 28.10.1987 with the following terms and conditions:

"They are cautioned that their promotions are being made on a purely adhoc basis and they are liable to be reverted to their parent cadre at any point of time without any reasons being assigned. Further, their promotions are without prejudice to their interse seniority and the seniority of Direct Recruits to be appointed at a later date.

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This purely officiating arrangement will not confer any right on them for claiming any preferential treatment or advantage in the matter of seniority and future regularisation of these temporary appointments."

They are also cautioned that their promotion/seniority is without prejudice to the claims of other officers who are eligible to be promoted to the grade of Preventive Officer."

3. The applicant had obviously accepted the conditions of adhoc promotion. Annexure A3 memo disposing of the applicant's representation dated 6.12.2000, which has been impugned in this application, refers to these accepted conditions as the reasons why the applicant could not now claim regularisation from the date of his adhoc appointment. The applicant however contends that by application of the principles laid down in the case of Rudra Kumar Sain (2001(3)SCC 125) his appointment could not really be termed adhoc as it satisfied the three conditions for being treated as regular: qualification, selection by regular procedure, and uninterrupted long continuity. The respondents however do not accept the contention and argue that the ratio in Rudra Kumar Sain would be wholly inapplicable in the case of the applicant as the recruitment rules that governed Rudra Kumar Sain are different from those that govern the applicant. Further, the applicant was not selected through regular procedure although he had the qualification and he had cleared the physical test. In regard to continuous engagement for as long as 16 years on adhoc basis, they argue that though there was no regular vacancy, short-term vacancies kept arising due to deputation of officers without replacement, for manning cost reserve posts and in order to discharge these fluid commitments in terms of both timing and necessity, adhoc appointment was resorted to, with the clear condition that such adhoc appointment would not confer the

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right of regularisation. They also argue that they were always in a position, armed by the conditional appointment order, to terminate the adhoc appointment, reducing the applicant to the lower ministerial status periodically by making a chain of adhoc appointments to circumvent any future claim for regularisation, instead they allowed the applicant the benefit of higher status, full pay and other advantages as they would grant to a regular appointee. They also aver that they had never disowned their responsibility to appoint the applicant on regular basis when a regular vacancy in promotee quota materialised. In fact they promoted the applicant on regular basis when a vacancy could be located. The applicant countered this by stating that the very fact that a vacancy could be located retrospectively only goes to show that the vacancies were not being computed on current basis and false declaration was made by the third respondent in A3 Memo disposing of the representation.

4. We have heard the counsel for the parties and have examined the evidences produced in support of rival contentions. We would have found it helpful if the parties in the array had produced the quota wise break up of occupied posts from 1987 to 1997. In the absence of such information we have gone by the available evidences on records to conclude if indeed the applicant could have been appointed on regular basis earlier. One such valuable record is the judgment of this Tribunal in O.A. 791 and 800 of 1990. In this judgment, this Tribunal had with meticulous precision worked out the configuration of Direct Recruits and Promotee quota in 1991 and had come to the conclusion that there were at least 12 regular promotees and 9 adhoc promotees in excess

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of what could be accommodated by the cadre. On that basis they had dismissed the application of S.K. Dinesan, M.V. Subramanian and 6 others. Both Dinesan and Subramanian are juniors to the applicant. We also find from the reply statement of the respondents 4 & 5 that as on 1993 there were 32 carried forward Direct Quota vacancies against which promotees were placed by under-reporting the vacancies. We find from the revised seniority list of Preventive Officers (Annexure A-18) as on 1.7.1995 that there were no promotee quota vacancies available and 24 adhoc Preventive Officers including the applicant were awaiting regularisation. As on that date the last promotee appointed regularly was T.K. Haridas, applicant's senior (Sl. NO. 168) on 26.4.1995. The applicant's claim that he should have been placed at Sl. No. 53 in the annexure A-18 list is not only baseless, it is apparently mischievous. In fact that would place him above P.B. Sandhayavu who was in the PO grade since 23.11.1977 (i.e. ten years prior to the applicant) and who had joined the service ten years ahead of him. We are thus left with no doubt that the applicant is before us without any established right and is using this case for a roving enquiry into the possibilities that may emerge or else he would not have sought equality of status with a promotee colleague ten years his senior. We are convinced that the ratio of Rudra Kumar Sain would not be applicable to him. Although the applicant fully satisfied the eligibility condition, he was not considered by a regularly constituted DPC. Annexure A-12 makes it abundantly clear that promotions were adhoc as these

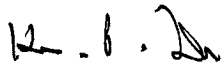
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did not pass through scrutiny and approval of a regularly constituted DPC. The conditions attached to the adhoc promotion acquire greater substance in this light.

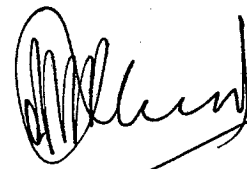
5. In the result we dismiss the Application leaving the parties to bear their own costs.

Dated 6.10.2004.



H.P. DAS
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN