

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Dated the Twentyseventh day of June, One thousand
Nine hundred ^{eightynine} P R E S E N T

Hon'ble Shri S.P Mukerji, Vice-Chairman

ORIGINAL APPLICATION NO. 269/89

A. Bhaskaran .. Applicant

Vs.

1. The Collector of Central Excise, Cochin-18.
2. Union of India, represented by Secretary to Government, Ministry of Finance, New Delhi.
3. Smt. B. Vasanthakumari Amma, Inspector of Central Excise, Trivandrum II Range, .. Respondents
Trivandrum.

Mr. Rajendran Nair .. Counsel for the applicant

Mr. P. V. Madhavan Nambiar, SCGSC .. Counsel for R-1 and R-2.

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 5th May, 1989 the applicant who is an Inspector of Central Excise at Palghat has prayed that the Order dated 24.4.1989 at Annexure -IX in so far as the posting of respondent 3, another Inspector of Central Excise to Air Customs, Trivandrum is concerned, should be set aside and the applicant should be transferred to the Air Customs Pool at Trivandrum. According to the applicant, posting of Excise Inspectors to the Air Customs Pool at Trivandrum is made on the basis of seniority-cum-suitability for a maximum period of two years. He is aggrieved by the fact that his juniors were transferred in 1987 to the Air Customs Pool and his representation was not heeded. In 1987 he had four years of service left to retire. Again in 1988 his willingness to be posted to

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the Air Customs Pool was sought and the applicant gave his willingness, but again he was not selected for the posting. According to him, he did not have any adverse report and his fitness can be deduced from the fact that ^{earlier} he was picked up to appear in the interview for posting at Sagar Air Port, Bombay. Again in February, 1989 his willingness was called for posting at Air Customs Pool, Trivandrum and the applicant gave his willingness. But this time again by the impugned order, while 25 Inspectors were picked up, he was not included in the list even though 23 of these 25 persons were junior to him.

2. The respondents indicated that a ^{Committee} ~~panel~~ consisting of Collector of Central Excise and the Collector of Customs selected ^{for posting} officers to the Air Customs and that Committee found the applicant to be not fit in 1986, 1987 and 1988. He was not selected in 1989 as he was to retire on 30.6.1990. They have clarified that nobody has a right of posting on the ground of seniority as the posting is done on the basis of experience, integrity and qualities of patience and courteousness for handling international passengers. They have also indicated that "officers on the verge of retirement are not usually posted to Air Port. Hence he was not posted to Air Port in 1988." Since he had only one year left to retire, he could not have completed the tenure period of two years at the Air Port ^{and thus} he was not selected in 1989 and there has been no discrimination.

3. On the question of discrimination, the applicant in his additional rejoinder pointed out one Shri Chellappan Nair, Inspector of Central Excise was allowed to continue only for one year at the Air Port and thus 2 year period of tenure could not be the minimum period. He mentioned the case of one Shri Raghavan Nambiar who was posted to the

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Air Customs Pool when he had only 2 years of service left. He also quoted the case of one Shri Rajan, Superintendent in Cochin Customs who was to retire in 19.1.1990^{but} was[^] posted at Trivandrum International Air Port on 1.6.1989 when he had less than 8 months of service left. The respondents have conceded that no minimum period of tenure is fixed for posting at^{the} Air Port, but the Committee decided that officers with less than 3 years of service need not be considered. They explained that Shri Chellappan Nair had to be transferred from the Air Port on administrative grounds. Shri Raghavan Nambiar's case was distinguished by the respondents on the ground that he was posted at the Air Port as Superintendent. In case of Shri Thimothi, the respondents have stated that he was selected by a different Committee against the Customs quota.

4. I have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. It is accepted that posting of the applicant to the Air Customs Pool at the International Air Port at Trivandrum was not a matter of promotion, but a question of simple posting and transfer. The post does not carry even any special pay over and above the pay which the applicant is getting as an Inspector of Central Excise. Yet the post is attractive because of prospects of the Inspectors being rewarded for detecting smuggling and other economic offences generally committed at the International Air Port. This Tribunal has been holding the view that being a matter of posting and transfer, the Tribunal would not intervene^{in Air Port posting} especially when the selection is made by a Committee of senior officers. There is nothing wrong in having a process of selection or screening, because as has been rightly pointed out, the posting at the Air Port would call for special qualities of integrity.

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courtesy and a ^{perceptive} ~~perspective~~ mind.

5. In the instant case, however, it has been brought out that eventhough the applicant was found to be fit in 1986, 1987 and 1988, in 1989 even his fitness was not adjudged by the Selection Committee because he had less than 3 years of service left. I have examined the proceedings of the Selection Committee and I am satisfied that the Committee did not consider his case on this ground. On the other hand, the respondents have accepted that the officials are posted at the Air Customs Pool for a maximum period of 2 years and that the Committee on their own followed the criterion of considering only those candidates who have atleast 3 years of service left. To me such a criterion per se does not appear to be valid. Such a classification also has no nexus with the objective in view that persons selected would have a maximum of 2 years of tenure. Where, therefore, the tenure can be anything less than 2 years, but never more than 2 years, having an eligibility criterion of 3 years of service before ~~the~~ retirement does not stand to either reason or public interest.

6. Further the applicant has persuasively pointed out the instances where the officials even with less than 8 months of service left have been posted at the Air Customs Pool. The explanation given by the respondents that they were at different levels or selected by different Committees is not very convincing as the criterion of eligibility should be common and not varying from Committee to Committee. The difference in the duties of an Inspector and the Superintendent are not so wide apart as to justify the ^{contrary} ~~different~~ eligibility criterion. ^a

7. While, therefore, I fully allow the administrative discretion and judgment of the respondents to handpick

officials for posting at the International Air Port, I cannot support firstly the 3 year rule of eligibility and secondly even applying that rule with ^{discrimination.} discretion. On the basis of his seniority and experience, the applicant has a right to be considered for a posting at the Air Port, for which his willingness had been invited by the respondents themselves. and that right cannot be taken away by the D.P.C by evolving their own criterion of eligibility. While the D.P.C is fully within their power to evolve their own criteria of selection, they cannot refuse to consider the applicant by evolving their own criterion^a of eligibility. The learned Counsel for the respondents brought to my attention my judgment dated 19.5.1989 in O.A 283 of 89, in which according to him, a similar application was rejected at the preliminary stage on the ground that non-selection for posting at the International Air Port of Trivandrum carries no stigma and hence cannot be a valid ground of grievance. In the instant case before us, however, the applicant has brought out the element of discrimination in not considering him for such a posting. In the aforesaid O.A No.283 of 1989 the ground of discrimination had not been taken up by the applicant.

In the facts and circumstances I allow the application to the extent of directing the respondents that the fitness of the applicant should be considered by the D.P.C ^{within a period of one month from the date of receipt of this order,} without consideration of the length of service left before his retirement and that he should be posted at the Air Customs Pool at Trivandrum on the basis of his seniority, if the Committee finds him fit for such a posting. There will be no order as to costs.


27.6.89
(S.P. MUKERJI)
VICE-CHAIRMAN