

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 31 of 2003

Friday...., this the 13th day of October, 2006.

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

**K.V. Balachandran,
S/o. A.K. Velayudhan Elayidam,
Chemical Examiner Gr. II (under
Order of Reversion), Custom House
Laboratory, Custom House, Cochin - 682 009,
Residing at Kuttamppilly House, Vennala. Applicant.**

(By Advocate Mr. K.V. Jayachandran)

v e r s u s

- 1. Union of India, represented by its
Secretary, Department of Revenue,
Ministry of Finance, New Delhi.**
- 2. Chairman,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Revenue, New Delhi.**
- 3. The Commissioner of Customs,
Customs House, Cochin - 9. Respondents.**

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

**This Original Application having been heard on 6.10.06, this Tribunal
on 13-10-06 delivered the following :**

**O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

Much of the battle is over with the issue of letter No. C-18012/8/2003-

AD.II-B dated 20th July, 2006 filed by the respondents as Annexure R-4.

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However, what is to be seen is whether their proposed action as contained in the said letter is in tune with the direction of the Tribunal as contained in the order dated 22nd October, 2003 in OA No. 526/02 and 87/03 of the Mumbai Bench. The operative portion of the Tribunal's order reads as under:-

***"10. In that view of the matter, we however direct that the respondents to take steps for filling up the vacant posts on regular basis from the day/dates the vacancy/vacancies did arise and accordingly the seniority list be prepared. This exercise has to be done within four months from the date of communication of this order."* (emphasis supplied)**

2. This decision was challenged by the Respondents before the Hon'ble High Court of Mumbai which had upheld the said decision by its order dated 28th October, 2004 in Writ Petition No. 1427/2004 and the same reads as under:-

***"The Central Administrative Tribunal, in its judgment dated 22nd October, 2003 observed that from the schedule, it has been demonstrated that six posts were available from the year 1997-98 onwards before new Recruitment Rules came into force. It is not in dispute that if the year of allotment is taken into consideration prior to the new Recruitment Rules coming into force, then, the right of those who were eligible to be considered for promotion to the post of Chemical Examiner Grade II cannot, however, be denied in the manner indicated in the Rules prior to amendment. The Tribunal has indicated that from the factual scenario, it has emerged that six posts were available to be filled up on a regular basis. The Tribunal gave direction that the respondents take steps in filling up vacant posts on a regular basis from the date the vacancies did arise; and accordingly the Seniority list be prepared."* (emphasis supplied)**



3. The order of the Tribunal has been interpreted by the DOPT (as communicated in the letter dated 20th July, 2006 referred to in para 1 above) as under:-

"Finally, the CAT disposed of the OA with the observations asking the department to take steps for filling up the vacant posts on regular basis from the dat/dates the vacancy/vacancies did arise and accordingly, the seniority list be prepared. On these considerations, DOP&T have felt that the issue related to filling up of vacancies prior to amendment of the Rules and its scope cannot be extended to allow retrospective benefit to empanelled officers against arising vacancies subsequently. Such retrospective promotion is against the policy instructions." (emphasis supplied)

4. The respondents have decided to implement the above suggestion of the DOPT in the case of the applicant in this OA (31/03) as well, as contained in the above letter dated 20th July, 2006, referred to in para 1 above.

5. In so far as the applicant in this OA is concerned, he was initially promoted on ad hoc basis as Chemical Examiner Grade I which post he held till he was, by Annexure A-1 impugned order, reverted on 09-01-2003 with retrospective effect from 01-12-1999 which would have the consequential effect on fixation of pay and allowances etc., and the relief sought for is inter alia as under:-

"To declare that the applicant is entitled to be considered for regular promotion with effect from 11-12-1997 and direct the respondents to consider the applicant for regular promotion with effect from 11-12-1997 with all consequential benefits including seniority."

A handwritten signature consisting of a stylized 'b' and a checkmark.

6. Now the core question is whether the interpretation by the DOPT of the order of the Mumbai Bench of the Tribunal referred to in para 1 above is correct. The first error is that whereas there was a clear direction by the Tribunal (which has been clearly mentioned even in the order of the High Court of Mumbai vide para 2 above) the DOPT has diluted the same and stated that the Tribunal has 'disposed the O.A. with the observation'. Next is that the DOPT has stated that '*filling up of vacancies prior to amendment of the Rules and its scope cannot be extended to allow retrospective benefit to empanelled officers against arising vacancies subsequently*'. The order the Mumbai Bench should be understood in the way that vacancies on various years from 1997-98 under promotional quota should be filled up and seniority list should also be prepared accordingly. Thus, those who were granted ad hoc promotion, if found within the consideration zone for a particular year, say 1997-98 should be considered for promotion and those who were promoted should be given the seniority of 1997-98 and similarly, vacancies of subsequent years should also be filled up by the above method. Nothing less; nothing else!

7. Thus, telescoping the decision of the Mumbai Bench order in the instant OA, as the applicant is admittedly similarly placed as those in the other O.As (of Mumbai Bench), the respondents have decided to adopt the

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same order in this case also. To that effect, they are right; but the case of the applicant is slightly different from that of others in that there has been a reversion order and also in their counter, the respondents have threatened recovery of excess pay and allowances in the wake of the reversion order, vide para 5 of the reply. This recovery shall not be effected as the applicant had enshouldered the higher responsibilities, in view of the following decisions of the Apex Court:-

(a) Kameshwar Prasad v. State of Bihar, (1995) 6 SCC 44, where the Apex Court has held :

"Since the appellant has already worked from 8-5-1991 till 10-12-1992 as a clerk, he is entitled to salary attached to the post of clerk for the said period."

(b) Jaswant Singh v. Punjab Poultry Field Staff Assn.,(2002) 1 SCC 261, at page 264 :

In that case, the appellant originally appointed as Bird Attendant, was later appointed as Chick Sexer which he held for a substantial period. His claim for the pay scale as of Chick Sexer was dismissed by the Court in the suit filed by him. In the appeal, the Additional District Judge held, "... the Department is ordered to consider the fact as to whether the plaintiff was working as Chick Sexer and if so his request for other benefits may also be considered according to law." In the meanwhile, one Gobind Singh (whose case was substantially similar to the appellant's case) also filed a suit. The suit ultimately culminated in an order passed by the High Court in second appeal by which the High Court directed that since Gobind Singh had been discharging the duties of a Chick Sexer, he was entitled to get the pay and allowances of that post. As far as the appellant was concerned, in purported compliance with the direction of the Additional District Judge and the decision of the High Court in Gobind Singh case, an order was passed promoting the appellant as Chick Sexer. This order was challenged under Article 226 by the Punjab

Poultry Field Staff Association (Respondent 1 herein). The Association claimed that the appellant was a Class IV staff member and was not qualified nor eligible to be promoted to the post of Chick Sexer which was a Class III post. The Association's writ application was allowed by the High Court holding that the appellant was not qualified to hold the post of Chick Sexer. The Apex Court has, however, held that in Gobind Singh case what was directed was the payment of salary and allowances of the post of Chick Sexer since Gobind Singh had been discharging the duties of that post. Therefore, ... given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

(c) In the case of *Selvaraj v. Lt. Governor of Island, Port Blair, (1998) 4 SCC 291* the order states as under:-

2. A limited notice was issued in the SLPs which has resulted into these appeals. It was to the effect "whether the petitioner is entitled to draw the salary attached to the post of Secretary (Scouts) during the time he actually worked on that post pursuant to the order at Annexure 'E' dated 28-1-1992 at page 32 of the Paper-Book. And if so, what was the scale of pay for the said post according to him". When we turned to the order dated 28-1-1992 under which the appellant was called upon to look after the duties of the Secretary (Scouts) we find the following recitals as per Order No. 276, dated 28-1-1992.

"The Director of Education, A & N Islands is pleased to order the transfer to Shri Selveraj, Primary School Teacher attached to Middle School, Kanyakumari to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77."

3. It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman &

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Nicobar Administration that the appellant was regularly posted in the pay scale of Rs. 1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant only on this ground.

4. The appeals are allowed to the limited extent that the respondents will be called upon to make available to the appellant the difference of salary in the time scale of Rs.1640-2900 during the period from 29-1-1992 to 19-9-1995 during which time the appellant actually worked."

(d) In yet another case of *Jeet Singh v. M.C.D.*, 1986 Supp SCC 560 the Apex court's verdict is as under:

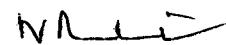
".... Petitioners claim that they have been in continuous employment ever since the year 1979 and that they are entitled to the salary and allowances are paid to regular and permanent employees on the principles of equal pay for equal work. Following the order made in the Writ Petition Nos. 3077-3111 of 1985 we direct that these petitioners shall be entitled to the salary and allowances on the same basis are paid to regular and permanent employees from the date of their continuous employment. Respondent will ascertain the date of their continuous employment and payment as aforesaid will be made to the petitioner within 3 months from today. The matter is disposed of accordingly."



8. In view of the above, order dated 09-01-2003 (Annexure A-1) is quashed and set aside and consequently, there shall be no recovery from the applicant on the basis of the reversion order dated 09-01-2003 (Annexure A-1) and the OA is disposed of with a further direction to the respondent to consider the regular promotion of the applicant as per the direction of the Mumbai Bench as explained in para 6 above. This drill shall be performed within a period of four months from the date of communication of this order.

9. No costs.

(Dated, the 13th October, 2006)



N. RAMAKRISHNAN

ADMINISTRATIVE MEMBER



K B S RAJAN

JUDICIAL MEMBER

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