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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 579/89

199

T.A. NO:

DATE OF DECISION 6-11-1991

Gopinath Gopal Kumbhar

Petitioner

Applicant in person

Advocate for the Petitioners

Versus

Collector of Central Excise, Respondent  
Pune.

Mr. A. I. Bhatkar

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. M.Y. Priolkar, Member(A)

The Hon'ble Mr. D.K. Agrawal, Member(J)

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

*[Signature]*  
(M.Y. PRIOLKAR)  
Member(A)

mbm\*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.579/89

Gopinath Gopal Kumbhar,  
Sepoy serving under  
Assistant Collector of  
Customs  
Ratnagiri Customs Division,  
Jail Road,  
Ratnagiri - 415 612.

.. Applicant

vs.

Collector of Central Excise  
and Customs Pune,  
P.M.C. Building Hirabagh,  
Tilak Road,  
Pune 411 002.

.. Respondent

Coram: Hon'ble Shri M.Y.Priolkar, Member(A)

Hon'ble Shri D.K.Agrawal, Member(J)

Appearances:

1. Applicant in Person.
2. Mr.A.I.Bhatkar  
for respondent.

JUDGMENT:  
(Per M.Y.Priolkar, Member(A))

Date: 6-11-1991

The applicant in this case was initially appointed as a Lower Division Clerk(LDC) in the Customs Department on 3-3-1976 on compassionate grounds as his father had died while in service in that department. At the time of this appointment, the applicant had passed only VII Standard and had not passed the S.S.C. Examination which was the minimum educational qualification for the post of LDC and the appointment was, therefore, made subject to the condition that the applicant would pass the examination within two years. The applicant could not, however, pass the examination within this prescribed period of two years and even during two further extensions of time that were granted for this purpose and finally he was reverted to the post of sepoy with effect from 23-2-1981, that is after about 5 years of working as LDC. The applicant, however, passed the SSC examination in March, 1986. His prayer in this application is that he be restored to his original cadre of lower division

clerk from the date of passing of SSC Examination.

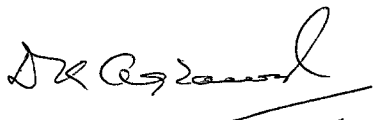
2. According to the applicant, due to full time service, heavy family responsibilities, being the only adult male member after his father's death, frequent changes in the syllabus of the examination and also his indifferent health being a T.B. patient, the applicant could not clear his SSC examination in time. He had, however, passed that examination in March, 1986 without neglecting his official duties. Since his five years' service as LDC was without any blemish he should have been restored to that post at least after acquiring the SSC qualification in March, 1986.


3. The respondents contend that they have been quite lenient towards the applicant who was given extension of time twice to acquire the minimum educational qualification but he failed to do so, and had, therefore, to be reverted to the lower post of Sepoy, in which he is working at present. According to the respondents, the applicant is, as per the existing rules, eligible for promotion to the post of LDC from Group 'D' through 10% quota which is reserved for promotees as 90% of the recruitment to the post of LDC is through direct recruitment.

4. Not having acquired the minimum educational qualification within the prescribed period and thus not having fulfilled the condition subject to which his appointment was made on compassionate grounds, the applicant has no doubt forfeited his right to continue in the post of LDC. Nor do we find any justification for his prayer that he should have been restored to that post at least from the date of acquiring that qualification, though much later

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than the expiry of the initial prescribed period and even the further extensions of the time limit granted to him. We are, however, inclined to think that he deserves sympathetic consideration, having worked in the post of LDC for almost ~~for~~ five years and having ~~worked in the~~ succeeded finally in spite of certain genuine difficulties and handicaps, in achieving the ~~the~~ educational qualification. We would accordingly direct on the facts and circumstances of this case that the respondents should not make the applicant wait for the appointment as LDC again from the 10% quota reserved for promotees from Group 'D' employees, but he should be forthwith considered in the next available vacancy of LDC from the percentage reserved for compassionate appointments. His previous service as LDC should also count for his seniority in that post on his further appointment as LDC. With the direction, this application is disposed of finally with ~~no~~ no order as to costs.

  
(D.K. AGRAWAL)  
Member(J)

  
(M.Y. PRIOLKAR)  
Member(A)

MD