

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 907/96

Transfer Application No.

Date of Decision 1.8.97.

Mrs. Kalpana Agnihotri

Petitioner/s

Shri V.S.Masurkar for Ms.Y.Shenoy

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri Wadhavkar for Shri M.I.Sethna

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member (J)

Hon'ble Shri. M.R.Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(M.R.KOLHATKAR)
MEMBER (A)


(B.S.HEGDE)
MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 907/96

Dated this the 1st day of August 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)

Hon'ble Shri M.R.Kelhatkar, Member (A)

Mrs. Kalpana Agnihotri,
Dy. Office Supdt.L-II,
(On Probation), Mumbai-II,
and at present residing at
Flat No. 106, P-9,
Noopur Palace, Noopur,
Noopur, Mira Road,
Dist. Thane.

By Advocate Shri V.S.Masurkar
for Ms. Yashoda Shenoy

... Applicant

V/S.

1. Union of India
through the Chairman,
Central Board of Excise
and Customs, North Block,
New Delhi.
2. Chief Commissioner,
Central Excise and Customs,
Mumbai.
3. Commissioner of Central Excise
and Customs, Pune.
4. The Commissioner of Central
Excise, Mumbai-II,
Piramal Chamber, 9th Floor,
Jejibhai Lane, Parel, Mumbai.
5. Assistant Commissioner (Admn),
Central Excise, Mumbai-II,
9th floor, Piramal Chamber,
Jijibhai Lane, Lalbagh, Parel,
Mumbai-12.
6. The Secretary,
Department of Personnel and
Administrative Reforms,
Ministry of Personnel
Public Grievance and Pension,
New Delhi.

By Advocate Shri Wadhavkar
along with Shri M.I.Sethna,
C.G.S.C.

... Respondents



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O R D E R

(Per: Shri B.S.Hegde, Member (J)

This is an application under Section 19 of the A.T.Act, 1985 in which the applicant has prayed for the following reliefs :-

"(i) To quash and set aside the impugned orders dated 15.5.1995, 17.7.1996 and 20.8.1996 (Exh.A-I, A-II & A-III) and direct the respondents to grant request of the applicant to switch over to the post of Tax Assistant.

(ii) To quash and set aside respondents orders dated 13.6.1988 and 10.9.1992 (Exh. XV & XVI) respectively as unconstitutional and be declared as violative of Articles 14 and 16 of the Constitution."

2. The brief facts, which are not in dispute, are as follows :-

The applicant had originally been appointed as U.D.C. through Staff Selection Commission on 16.2.1988 and was posted as U.D.C. in the office of Commissioner of Central Excise, Bombay. The next promotion is to the grade of Inspector/Tax Assistant and to get that promotion, one has to pass departmental promotion examination and the said departmental examination was held on 26.6.1990, she appeared in the said examination and passed. By virtue of passing, her name was included in the list of successful candidates as per the list published by the respondents vide dated 25.9.1990 at Sr.No. 28. Thereafter, she was granted special pay of Rs.70/- p.m. in addition to the grade pay of U.D.C. and was posted in the Head quarter. On her passing the departmental examination for the post of

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Inspector/Tax Assistant, Respondents promoted her to officiate in the grade of Tax Assistant in the pay scale of Rs.1350-2200 plus allowances as per Establishment order dated 6.9.1991. She joined as Tax Assistant on 20.9.1991 (Exh.A-VII) and she has been confirmed in the grade of U.D.C. w.e.f. 30.12.1991 (Exh.A-VIII). The Additional Collector (P&V), Central Excise, Bombay vide his letter dated 4.5.1992 in which Tax Assistants, U.D.Cs. and stenographers who have passed the prescribed promotion examination and completed the necessary qualifying service are required to undergo physical test, i.e. walking & cycling etc. before they are interviewed by the D.P.C., thereby a list of officials was prepared, including the applicant's name. Interview was fixed on 16.6.1992 in which the applicant was called. The respondents vide their order dated 7.12.1994 have promoted the applicant notionally to the grade of DOSSL II with effect from the date of joining of their juniors. Consequent upon the promotion, she has been posted as DOSSL II to Bombay-II Collectorate.

3. Since the applicant has not passed in the interview for the promotion to the grade of Inspector and also she has not appeared for physical test held in the year 1993 for the post of Inspector/Tax Assistant can be promoted in Executive channel as Inspector or in Ministerial channel as DOSSL-II. The applicant has been promoted in Ministerial channel as DOSSL-II vide order dated 9.11.1994. In the promotion order, it is mentioned that promotees will be on probation for a period of two years from their date of joining in the

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grade of DOSL-II. Promotees should join their posting on promotion on or before 15.12.1994 failing which their promotion order will be cancelled treating their non-joining by the stipulated date as refusal to accept the promotion, etc. Since the applicant has accepted promotion and joined as DOSL-II in Ministerial channel on 22.11.1994, and after completing one year and 3 months in the grade of DOSL-II, she made representation dated 27.2.1996 to the Commissioner, Central Excise, Mumbai-2 stating that instead of continuing in Administrative side, she intends to shift to Executive cadre and to consider her name for the post of Tax Assistant to Inspector and her seniority as Tax Assistant may be fixed as per rules. The said request was considered by the Cadre Controlling Authority (i.e. Pune Commissionerate) and rejected her representation in view of the Board's instructions dated 13.6.1988 which reads as follows :-

" Your attention is invited to Board's circular F.No.A-32011/10/88-Ad.III-A dated 13.6.1988 which categorically lays down that once an officer accepts promotion to the grade of DOC(L-II) & is confirmed in the grade, he cannot be reverted to a lower grade nor can he be considered in future for promotion to the Executive grade."

Not satisfied with the reply, she again made one more representation, which was rejected by the Chief Commissioner, Central Excise, Mumbai on the basis of Board's instructions dated 13.6.1988 read with O.O.P. & T's O.M. dated 28.3.1988.

4. Aggrieved by the aforesaid order of rejection, she filed the present OA. on 10.9.1996.



5. The contention of the learned counsel for the applicant is since the applicant is on probation for a period of 2 years, before the expiry of probation period she had exercised the option as she had not been confirmed in the post of DOSL-II and therefore, rejection of her representation is malafide, arbitrary and unconstitutional. Further, it is contended that respondents' circular dated 13.6.1988 and 10.9.1992 are in violation of Articles 14 & 16 and creates discrimination between the different services of Central Government.

6. The learned counsel for the respondents Mr. M. I. Sethna along with Mr. Wadhavkar denied the contentions of the applicant and submits that the applicant had become eligible for promotion to Executive cadre in the year 1992 and subsequent years till 1994, she had also become eligible for promotion to next higher grade as per seniority in U.D.C. to the grade of DOSL-II. Accordingly, she had been promoted on 22.11.1994 as per her request. She had the option of refusing the said promotion if she intended to opt for Executive line. She desired to continue in the Ministerial cadre and so had joined her promotion post as DOSL-II. She has not refused the promotion nor availed the option. Further, it is denied that the clarification dated 10.9.1992 is not applicable to the facts and circumstances of the present case. There are separate instructions which govern the confirmation of an officer which is clear from the D.O.P&T's O.M. dated 28.3.1988 stating that "Confirmation will be made only once in the service of an official which will be in the entry grade". The applicant has been confirmed

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as UDC as back as in 1991 though not in DOSL-II. Therefore, the contention of the applicant that the applicant is still on probation is not correct & justified. The Board's circular clearly states that "when the individuals have already accepted the promotion, their reversion to the lower post is not in order as it would create administrative problems in filling up the posts."

7. In support of their contention, the respondents rely upon the decision of the Madras Bench in S. Anthony James vs. Secretary, Central Board of Excise & Customs, New Delhi & Ors. 1997 (1) ATJ 185, where a similar issue arose before the Tribunal and of the same department where the Tribunal has held that "it is not possible to seek reversion for getting promotion to executive side and also observed that DOP&T's circular clearly envisages and bars the people from getting reverted to a lower grade nor could they be considered in future for promotion to the executive grade - held it is not for the Tribunal to have any say in respect of policy - applicant not entitled to get reversion from ministerial cadre to get promotion to executive grade."

8. The learned counsel for the respondents also relied on the decision of the Hon'ble Supreme Court in N.K. Singh vs. Union of India & Ors., (1994) 28 ATC 246, wherein in Para 23 the Apex Court has held that "Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and

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exigencies of administration.....

The only realistic approach is to leave it to the wisdom of that hierarchical superiors to made that decision. Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

9. The respondents also relied on the decision of the Principal Bench of the Tribunal in Ram Kishan vs. Union of India & Ors. 1996 (2) ATJ 116, wherein in similar circumstances the Tribunal has held that :-

" Staff promoted and posted in the same status cannot be decline such promotion and such refusal could invite disciplinary action -- Applicant a Driver was promoted to the post of Power Controller which falls in the direct line of promotion for Drivers -- cannot claim reversion to the post of Driver, etc."

10. In the light of the above, since the applicant has already been confirmed in the post of U.O.C. as back as in 1991 and in view of the DOP&T's circular, an individual can be confirmed only once in service not in every grade, therefore, the order passed by the respondents rejecting her prayer that she should be allowed to revert to her parent cadre is in accordance with the rules and the action of the respondents is not discriminatory.

11. In the result, we do not see any merit in the OA and the same is dismissed with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)

mrj.

MEMBER (A)

Hegde

(B.S.HEGDE)

MEMBER (J)