

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 332/99

DATE OF DECISION: 28/4/2000

Smt. M.I.E. Pereira . Applicant.

Shri G.K.Masand

----- Advocate for  
Applicant.

Versus

Union of India & Anr

----- Respondents.

Shri Joseph.S.Vaz.

----- Advocate for  
Respondents.

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Baweja, Member(A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to  
other Benches of the Tribunal? *yes*
3. Library.

*R.G. Vaidyanatha*  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

abp/β .

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:332/99.  
DATED THE 28TH DAY OF APRIL,2000

CORAM:HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN  
HON'BLE SHRI D.S.BAWEJA, MEMBER(A)

Smt.M.I.E.Pereira,  
working as  
Superintendent of Customs(P)  
under Commissioner of Customs  
(GEN), Mumbai and presently  
residing at 11/588,MHB Colony  
Kher Nagar, Bandra(East),  
Mumbai - 400 050 and  
permanent resident of  
Fernandes Vaddo,  
Siolim, Barder, Goa.

... Applicant

By Advocate Shri G.K.Masand

V/s.

1. Union of India, through the  
Secretary,  
Ministry of Finance,  
Department of Revenue,  
Central Board of Excise & Customs,  
North Block,  
New Delhi.
2. Commissioner of Customs,  
(General), New Customs House,  
Ballard Estate, Mumbai-400 038.

... Respondents

By Advocate Shri Joseph.S.Vaz


(ORDER)

Per Shri Justice R.G.Vaidyanatha,Vice Chairman

This is an application filed by the applicant challenging the order of reversion. Respondents have filed reply. We have heard Shri G.K.Masand, the learned counsel for Applicant and Shri Joseph.S.Vaz, the learned counsel for Respondents.

2. Few facts which are undisputed for the purpose of disposal of the OA are as follows:-

...2.



The applicant joined the Customs Department in the Goa Commissionerate as a Lower Division Clerk, later promoted as Upper Division clerk and further promoted as Preventive Officer. As Preventive Officer she was sent on deputation to Mumbai on two occasions. When she came to know that her juniors had been promoted as Superintendent of Customs, she gave a representation. Then, the Administration granted that promotion by order dated 10/8/98. While she was working on promotion as Superintendent of Customs, she heard some rumours that she is likely to be reverted. Apprehending reversion, she has approached this Tribunal alleging that Respondents have no right to revert her. During the pendency of the OA, copy of reversion order was served on her and now the OA has been amended seeking a prayer for quashing the impugned order of reversion dated 25/3/99. Her case is that, she has a good record of service and therefore she cannot be reverted. It is also her case that she has not been given a show cause notice and even about the proposed order of reversion.

3. The stand of the Respondents is that applicant came to be reverted because of an order of the Tribunal granting seniority ~~to~~ to certain applicants who approached the Tribunal in OA-386/97 and connected cases. This Tribunal by order dated 11/12/98 directed the administration to grant seniority to the adhoc promotees and subsequently regularise~~d~~ from the date of their

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initial adhoc promotion. This decision was accepted by the department and accordingly those applicants and similarly placed officials were granted seniority from the date of their initial adhoc promotion. As a result of this, the seniority list came to be revised and in the revised seniority list, the applicant's position is far below. Since many of her seniors are still in the preventive officers grade, she cannot be continued in the grade of Superintendent of Customs and that is how the department has passed the impugned order reverting the applicant to the post of preventive officer.

4. Shri G.K.Masand, the learned counsel for the applicant, contended that when the applicant had good record of service, she could not have been reverted, particularly after she had been regularly promoted, ~~she~~ <sup>she</sup> could not have been reverted in the manner it has been done. It was further argued that atleast applicant should have been given a show cause notice or should have been heard in the matter before any adverse order is passed. Further, it was argued that even if those applicants in OA-387/97 and connected cases are entitled to seniority and consequent promotions, there was no necessity for the Respondents to revert the applicant. The learned counsel for the Respondents justified the order of reversion mainly on the basis of the Judgement of this Tribunal dated 11/2/98 in OA-386/97 and connected cases.

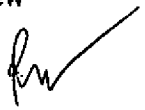
...4. 

5. Though normally an adverse order should not be passed without hearing the official concerned or without issuing a show cause notice, In the facts and circumstances of the case, we feel that it may not be necessary to issue show cause notice, since applicant knew fully well that her promotion was not unconditional, but it was conditional subject to decision in the pending OAs and writ petitions. The order of promotion dated 10/8/98 is at page-16 of the paper book and it reads as follows:

"Smt.M.I.E.Pereira, Preventive Office, Goa Customs is promoted to the cadre of Superintendent of Customs (Prev) on regular basis in the pay scale of Rs.6500-200-10500 (New Scale) with deemed date of promotion as 31/3/1998 and until further orders. Her placement in the seniority list of Superintendent of Customs (P) will be below Shri K.M.Swar, Supdt.(P) and above Shri Bijay Bushan Pattanaik, Supdt.(P).

The above promotions is subject to the final outcome in OA No.386/97, 761/97 760/97, 1174/97, 230/98, 231/98, 232/98, 233/98, 528/98, 529/98, d530/98, 531/98 & 535/98 in CAT, Mumbai and Writ Petition No.2898/98, 2899/98, 2900/98, 1045/98 & 3729/98 in High Court of Judicature, Mumbai."

6. From the above order we find that the applicant's promotion was on regular basis. But, it is clearly mentioned that it is "until further orders." Then we find in the second para where it is clearly mentioned that the promotion is subject to the final outcome of the OA No.386/97 and connected cases pending in this Tribunal and Writ Petition No.2898/98 and connected Writ Petitions pending in the High Court. Therefore, the Applicant knew

...5. 

fully on the date of promotion that, her promotion is until further orders and it is further subject to the pending OAs and Writ Petitions. Therefore, it is <sup>a</sup>an ~~un~~conditional promotion to the Applicant. Therefore, it is not an unconditional promotion to the applicant. The applicant knew very well that her promotion is subject to variation, depending on the result of the pending OAs and Writ Petitions. The applicant could have got herself impleaded in those OAs or Writ Petitions to protect her interest. Therefore, in the facts and circumstances of the case, we feel that since the applicant knew that her promotion was subject to certain conditions. Therefore, there was no necessity to issue a show cause notice.

7. It is not <sup>a</sup>the case whether the applicant has been reverted due to bad record or adverse remarks in the Confidential Report or misconduct, etc. This is a simplicitor reversion of the applicant, her seniority position <sup>having</sup> ~~has~~ been changed as a result of a judicial verdict. It is also not the case of administration revising the seniority list on its own and then bringing down the applicant's name far below, but here the exercise is done as a result of a direction by a judicial Tribunal and therefore the applicant cannot be continued in the present post when her position is far below in the seniority list. If there are many seniors in the seniority list of Preventive Officers post, the applicant cannot be continued in the promotional post. Therefore,

inevitably applicant had to be reverted by the administration.

8. The arguments that applicant need not have been reverted even though the applicants in those cases got seniority has also no merit. When, once those officials and similarly placed officials are given seniority and applicant's seniority is depressed and many of her seniors in the new seniority list are still in cadre of Preventive Officers, applicant cannot be continued in the post of Superintendent of Customs. In service jurisprudence such a thing is common and it cannot be helped. If the applicant had been reverted due to some other allegation, the matter would be different. But here, the reversion has taken place as an inevitable consequence of a judicial direction. Therefore, in the facts and circumstances of the case, we find no merit in the applicant's challenge to the impugned order of reversion.

9. Another comment was made that during 1980-84 there was no regular or adhoc promotion in Goa Commissionerate, while adhoc promotions were given in Mumbai Commissionerate and this has helped the Preventive Officers in Mumbai Commissionerate to get some advantage. This is a matter on which we cannot express any opinion at this stage. For one thing, we do not have necessary particulars about the vacancy position during 1980-84. No such prayer is asked for in the OA. Even otherwise it



is for the administration to decide to fill up posts or not to fill up a particular post. It may be, the work in Mumbai is very high and therefore Administration wanted to fill up the posts and Goa being a small State, may not have sufficient work in the higher post and the Administration may think that there is no urgency to fill up any post. We do not want to go into these questions, since there are no sufficient pleadings and prayers in the OA. Even <sup>if</sup> it is a fact, no relief can be granted in the present OA to consider the applicant for adhoc promotion during 1980-84.

After hearing both sides and going through the materials on record, we do not find that any such relief can be granted to the applicant in the present OA.

10. In the result the application is dismissed. No order as to costs.

  
(D.S. BAWEJA)  
MEMBER(A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

alp/B.