

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 998 OF 1999.

Dated this _____, the _____ day of _____ 2001.

Shri Subhash Wig, _____ Applicant.

Shri G. K. Masand, _____ Advocate for the
Applicant.

VERSUS

Union of India & Another, _____ Respondents.

Shri M.I. Sethna alongwith _____ Advocate for the
Shri V. D. Vadhavkar, _____ Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other *X*
Benches of the Tribunal ?
- (iii) Library. *p*

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(B.N. BAHADUR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 998 of 1999.

Dated this Monday the 30th day of April, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

Subhash Wig,
Preventive Officer,
Custom House,
Mumbai - 400 001.

Residing at -
Flat No. 5, Building No. 1,
Plot No. 510, Adenwala Road,
Matunga, Mumbai - 400 019.

... Applicant.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Government of India,
Department of Revenue,
New Delhi - 110 011.

2. Commissioner of Customs
(General),
New Custom House,
Ballard Estate,
Mumbai - 400 001.

... Respondents.

(By Advocate Shri M. I. Sethna
alongwith Shri V. D. Vadhavkar).

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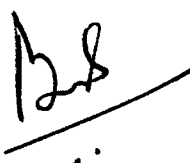
The applicant in this case challenges the order of Respondents dated 01.11.1999 (Annexure-A). Through this order he has been reverted to the post of Preventive Officer. Consequential benefits are also sought.

2. The facts of the case brought forth by Applicant are that he joined as Preventive Officer (P.O.) in Mumbai Customs in April, 1983, confirmed in 1985 and promoted as Appraiser with 13 others on adhoc promotion vide order dated 30.11.1998 (Annexure 'B'). He avers that this ad hoc nature of promotion came because of court cases, otherwise the promotions were made after a regular D.P.C. and against clear vacancies. The fact that an undertaking was taken from him (as described in para 4 (c) of the O.A.) is reiterated to emphasize the point regarding nature of promotion. The applicant joined his promotion post on 30.12.1998.

3. The applicant further states that he was suspended vide order dated 21.10.1999 in view of contemplated disciplinary proceedings. The challenge in this O.A. is, however, to the subsequent action of reversion, as stated in para 1 above. Applicant avers that O.M. of D.O.P.T. dated 24.12.1986, which is taken support of by Respondents is not applicable in his case.

4. The Respondents have filed a Written Statement (W.S.) in reply, resisting the claims of applicant, and taking the defence that the promotion of Applicant was ad hoc and it was made

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against cost recovery vacancies. It was not a regular promotion and the fact of willingness, D.P.C., etc. taken as grounds by the applicant are not valid; nor do they confer any right in the face of the facts under which applicant was suspended. In para 5 of the Written Statement, the reasons for suspension - following a C.B.I. investigation on serious counts are described.

5. In the further part of their detailed W.S., Respondents expound the details of the facts and meet the contentions/averments of applicant, parawise. Legal grounds are also taken.

6. We have heard the Learned Counsel on both sides and have seen all papers in the case, including the case law cited.

7. Learned Counsel for Applicant, Shri G. K. Masand, posed the question whether an employee already promoted can be reverted in view of a disciplinary enquiry being ordered. He took us over Rule 11 of C.C.S. (C.C.A) Rules, as both sides have depended on this Rule/Instructions and thereunder.

8. The Learned Counsel dilated on the points made in O.A. and argued that the promotion was not stop gap/short term in nature and did not attract the provisions of the D.O.P.T. O.M./Circular cited. Reversion could not be resoughted merely

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because of the enquiry. Shri Masand also raised certain other points, including the questioning of legal competence of the officer signing the impugned order on 1.11.1999, since the request for extending his date of voluntary retirement (w.e.f. 30.10.1999 was refused around 10th November, 1999).

9. Arguing the case on behalf of the Respondents, their Learned Counsel first sought to stress the point regarding promotions being ad hoc and hence laying the foundation for his basic reliance on the O.M. of D.O.P.T. He explained the concept of Cost Recovery Post being temporary and thus argued that no claim could be made. Shri Sethna repeatedly made the point that the instructions in D.O.P.T's O.M. dated 26.12.1986 (copy at page 24 of paper book) were the basis of their action. Learned Counsel contended that the case law cited by Counsel for applicant was not relevant.

10. Learned Counsel argued that reversion was the right of Government in respect of ad hoc promotees, in cases where departmental enquiries were ordered. He also took the point that Preventive Officer signing the impugned order, and stated that the concerned officer worked in his post till 11th November.

11. Case Law Cited :

11.1 Learned Counsel for applicant sought support from the ratio of the following cases :

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- (i) C.K. Banerji V/s. Union of India & Others reported at 1990 (2) ATJ 278.
- (ii) Tara Chand V/s. Union Of India reported at 1990 (2) ATJ 389.

11.2 Learned Counsel for Respondents sought to draw support from the case as below :

- (i) M. Ramachandra Das V/s. Union of India reported at 1997 (1) AI SLJ 18.

11.3 Further, both sides drew support from an O.M. of D.O.P.T. dated 24.12.1986. A copy is at Annexure 'H' (page 24) of the Paper Book. (This is the same circular reproduced at "Instruction No. 4" under Rule 11 of C.C.S. (C.C.A) Rules. This will be referred as "D.O.P.T. Circular" hereinafter.

12. The D.O.P.T. Circular does provide for reversion in case of initiation of departmental enquiry in cases where promotions are made on ad hoc basis against short term basis/leave vacancy, except in cases where the Government servant has held the appointment for a period of more than one year. Now here in this case, the order is of promotion, dated 30.11.1998 makes the promotion of ad hoc basis, and the words "until further orders" are also stipulated. It is also admittedly held for less than a year (nearly 10/11 months). The point of conflict is that Counsel for Applicant takes a stand that it is not really ad hoc on leave/short vacancy and takes support of the arguments

described earlier and the case law. The Counsel for the Respondent, on the other hand, states the matter should be looked at only with reference to the D.O.P.T. Circular, which squarely helps the case of the Respondents.

13. Now, as per law settled by the Apex Court, the issue regarding the nature of an appointment being ad hoc or otherwise, will need to be looked at by lifting the veil and examining the facts and not merely mechanically by the words used in the order of promotion or the instructions of Government (D.O.P.T. Circular). The case law cited by the Applicant's Counsel, as it turns out, is also very important in this case.

14. There is no doubt that the promotion made (order dated 30.11.1998) is not just a local arrangement or a short term leave vacancy. A process of selection was undertaken, as stated, where obviously the Preventive Officers were considered as per seniority list and considered by a D.P.C., etc. Also, what is very important is that the reversion does not come for want of posts. Strenuous arguments were made on behalf of Applicant to say that posts were temporary. Now if the reversion were made for want of posts, the applicant had no case against reversion. But the reversion has statedly come as a result of the enquiry, as seen in the order of reversion (impugned order).

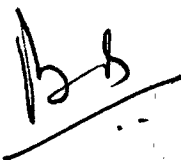
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15. We have seen the two cases (of C.D. Banerji & Tara Chand) cited. We have seen the two judgements carefully. We need not reproduce or restate the detailed reasons cited for quashing the reversion order in these two cases. Suffice to say that the facts and circumstances of the case before us are such that the ratio of these two cases, decided by the Calcutta & New Delhi Benches of our Tribunal are fully applicable to the case being dealt with here.

16. We have seen the judgement in the matter of M. Ramachandra Das V/s. Union of India cited by the Learned Counsel for Respondents to make the point that the instructions of D.O.P.T. are binding. Para No. 17 of the said judgement is seen. The arguments made is not at all valid. The case law cited hardly supports the Respondents and in any case, it cannot be the stand that a particular O.M. of the D.O.P.T. has to be binding irrespective of the merits of the case.

17. In view of the above discussions and since we agree with the view taken by the Calcutta and New Delhi Benches in the two cases cited, and of their applicability to the present case, we are convinced of the need/justification for interference in this O.A.

18. We must make it clear that the matter before us was only on the issue of reversion and this is the only issue dealt with.



We are conscious that there is a departmental enquiry against the Applicant. Our decision cannot and will not have any relevance to the departmental enquiry nor provide any support to the applicant in the matter of the Enquiry. Those proceedings are in independent matter, where the applicant will have to seek his defences as per law. The relief being provided here is only with regard to the holding of rank during the pendency of enquiry and consequential benefits.

19. In view of the discussions made above, this O.A. is allowed to the extent and in terms of the following orders :-

(a) The impugned order dated 01.11.1999 reverting the applicant on the ground stated therein is hereby quashed and set aside. The Applicant will be deemed to continue/will continue in the rank of Appraiser until completion of departmental enquiry after which the further position will depend on the outcome of the enquiry.

(b) Subsistence Allowance and other benefits entitled as per rules during the period of suspension shall be available accordingly. Differences in the allowances, etc. due as per this order shall be paid within three months (no interest shall be paid).

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(c) Observations at para ^{18/2-8} 17 above to be borne in mind by both sides.

(d) There will be no orders as to costs.

S.L. Jain
(S.L. JAIN)
MEMBER (J).

B. N. Bahadur
(B.N. BAHADUR)
MEMBER (A).