

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.772/2001

THIS THE 14TH DAY OF MARCH, 2002

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER(A)

1. Devendra B. Devidasani,
working as Examiner of
Customs at Customs House,
Mumbai.
2. A.B. Wagh,
working as Examiner of
Customs at Customs House,
Mumbai.
3. Vishnu G. Shende,
working as Examiner of
Customs at Customs House,
Mumbai.
4. Mrs. M.P. Phadke,
working as Examiner of
Customs at Customs House,
Mumbai.
5. Mrs. Sushama C. Tikam,
working as Examiner of
Customs at Customs House,
Mumbai.
6. Mrs. Kavita K. Nayak,
working as Examiner of
Customs at Customs House,
Mumbai.
7. Kum. Anjali Sadashiv Mirelekar,
working as Examiner of
Customs at Customs House,
Mumbai.
8. Mrs. Seema Arjun Wayekar,
working as Examiner of
Customs at Customs House,
Mumbai.
9. Mrs. Mrunal Rajendra Bagade,
working as Examiner of
Customs at Customs House,
Mumbai.

10. Mrs. Prajakta R. Sakharkar,
working as Examiner of
Customs at Customs House,
Mumbai. Applicants

By Advocate Shri G.K. Masand for Smt. S.S. Marne.

Versus

1. Union of India, through the
Secretary to Government of India,
Ministry of Finance,
Department of Revenue, North
Block, New Delhi-110 001.
2. Chief Commissioner of Customs,
New Custom House, Ballard
Estate, Mumbai.
3. Commissioner of Customs (G),
New Customs House, Ballard
Estate, Mumbai. Respondents

By Advocate Shri V.D. Vadhavkar for Shri M.I. Sethna.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry. Member (A)

The applicants were working as Tax Assistants. A selection was held on 09.6.2000 for promotion to the post of examiner. The applicants along with 18 others were called for the interview. According to the applicants, after the selection they were promoted as Examiner vide order dated 30.6.2000. Similar orders were issued in respect of promotion for the post of Superintendent of Customs, Appraisers and Preventive Officers. The applicants were also sent for training after their selection between 17.7.2000 to 29.8.2000. Therefore, the applicants joined the post on 29.8.2000. applicants No.2 to 6 appeared in the departmental

...3.

qualifying examination for the post of examiner and cleared the same on 26.4.2001. Applicants No.1 & 7 also appeared in the departmental examination, but their result had not been declared. Further, the respondents issued a circular on 07.6.2001 inviting more candidates for interview for promoting them as adhoc examiner. Thereafter, vide order dated 28.6.2001 applicants were reverted. The applicants proceeded on leave in protest. Within a week thereafter, the applicants were again promoted as Examiners with effect from 05.7.2001.

2. The applicants are aggrieved of their reversion by the impugned order dated 28.6.2001. According to the applicants, they were duly promoted after going through the proper selection process by a duly constituted DPC held in June, 2000. In spite of that, their promotion has been described as on adhoc basis. They are entitled to promotion with effect from 30.6.2000 without any break in service till their services are regularised. The applicants further submit that they are eligible to be regularised in the post of Examiner. They have not superseded any of their seniors and are also fulfilling all the requirements as per the recruitment rules for the post of Examiner. The respondents have resorted to giving artificial break of ~~two~~^{a few} days to the applicants and re-promoting them after some time. It is submitted that such artificial breaks are being given in purported compliance of the directions issued by the Government

concerning desirability of continued adhoc appointment beyond one year. The learned counsel for the applicants submit that the respondents had not been following the instructions of the DOP&T in this regard in proper perspective and arbitrarily decided to revert the applicants before completion of one year. According to the applicants, the instructions of the DOP&T are that normally adhoc promotion should not be continued beyond the period of one year and if they are to be continued under special circumstances, then the approval of the Ministry of Finance and the DOP&T should be obtained in advance. The applicants have therefore prayed to quash and set aside the reversion order dated 28.6.2001 in respect of the applicants and treat the period from 28.6.2001 to 05.7.2001 when they were promoted afresh as a continuous period. They have also prayed to consider the applicants for regularisation in the post of Examiner from the dates they were promoted on adhoc basis.

3. The respondents have filed their reply and state that they have followed the instructions and guidelines of the DOP&T in regard to the adhoc appointment/promotion. In this connection they have produced the letter dated 16th June, 2000 of the Ministry of Finance, Department of Revenue and letter dated 21st January, 2000 of the same Ministry.

According to the respondents, the applicants were promoted against cost recovery posts and not against any regular vacancies. The term "Cost Recovery" itself implies that the costs of these posts are recovered from private parties and these posts cease to exist when the parties stop making payments for the same. The applicants' promotions are therefore, purely on adhoc basis and it has been made amply clear in the promotion orders. The respondents also contend that this promotion does not in any way give any right for regular promotion. The respondents have only complied with the instructions, which have been reiterated by the Ministry of Finance in their letter dated 15.6.2000 and 21.01.2000 and at the first instance action was taken to revert the adhoc promotees who were about to complete one year.

4. The learned counsel for the applicants contends that the very fact that the respondents have issued another circular calling candidates for interview for the post of Examiner indicates that there are sufficient vacancies and the applicants need not have been reverted. Further adhoc promotees cannot be replaced by another set of adhoc promotees as it is a settled law. The learned counsel for the respondents has also taken us through the guidelines of the DOP&T in regard to adhoc appointments/ promotions as well as the letters of the Ministry of Finance referred to by the respondents.

The learned counsel stresses that the DOP&T has only advised that if the period of adhoc promotion or appointment exceeds one year then the approval of the DOP&T should be obtained. The learned counsel has brought to our notice a letter dated 11.10.2000 from the Commissioner of Customs (Q) Mumbai addressed to the Joint Secretary (Administration). Ministry of Finance, wherein request has been made to refer the matter of adhoc promotion of the applicants including others who were promoted similarly earlier to the DOP&T for approval for continuance of the adhoc promotions. The detailed information has been provided in regard to 38 Examiners working on adhoc basis as against the sanctioned cost recovery posts. This includes 10 Examiners i.e. the applicants in the present case. According to the applicants, no reply has been received to this specific letter and in the meantime the applicants were reverted and repromoted within a week thereafter.

5 . The learned counsel also submits that an identical issue had come up in OA No.374/2001 filed by Preventive Officers who also had been promoted as on 30.6.2000 as in the case of the present applicants, but as Preventive Officers and who were sought to be reverted by order dated 31.5.2000. The OA was allowed by this Tribunal and the respondents were directed to

continue the applicants therein in the post of Preventive Officers till regular incumbents became available against the unfilled vacancies.

6. We have heard the learned counsel for both sides and have perused the relevant instructions as well as the judgment referred to by the learned counsel for the applicants. The case of the applicants is no different than the case of applicants in OA No.374/2001 filed by the Preventive Officers, only the designations are different. We agree with the same.

7. We also sought information regarding the sanctioned strength of Examiners and the vacancy position from the respondents. The respondents have now produced the vacancy position as on 01.3.2002. According to this statement, which has been given across the Bar, the sanctioned strength of Examiners is 181. The working strength including adhoc appraisers is 137 and the vacancies are 44. The learned counsel for the respondents submits that out of 44, 37 are meant for direct recruits, that leaves seven regular vacancies for promotees. In addition to the above sanctioned strength of regular Examiners, there is a sanctioned strength of 40 adhoc Examiners and the working strength is 37 including the applicants, leaving three vacancies. There are adequate number of vacancies to continue the applicants as Examiners. The sole reason given by the

respondents is that they reverted the applicants in compliance with the DOP&T orders. In our considered view the DOP&T also has advised to take their approval in case the adhoc period is to be extended beyond one year. Though the respondents have made a reference to Ministry of Finance, apparently, there was no response to the reference either from the Ministry of Finance or from the DOP&T rejecting the request to continue the adhoc promotees, including the applicants, beyond the period of one year. Even before the reply could be received, the respondents reverted the applicants and repromoted them within a week's time. This shows that the respondents' action was merely with a view to give an artificial break and as a mere technicality rather than on any substantive ground. It was not that there is no vacancy or no work. Even though as claimed by the respondents, the adhoc Examiners post or Cost Recovery posts are of temporary nature and the number of posts will fluctuate, still according to the respondents themselves, the sanctioned strength is 40 and the applicants are within the sanctioned strength. Therefore, it is difficult for us to believe that the respondents had any genuine reasons to revert the applicants.

7. In the facts and circumstances of the case, in our considered view, the reversion of the applicants by the order dated 28.6.2001 was not justified.

Accordingly, we quash and set aside the aforesaid impugned orders and direct the respondents that the applicants' service from 28.6.2001 till 05.7.2001 shall be treated as continuous service for all purposes. They shall be continued in the post of Examiner till there is work and regular incumbents become available, on the same lines ^{as} in OA 374/2001 (supra). It is seen that the applicants had proceeded on leave on their reversion. In case any applicants have worked during the aforesaid period, they shall be entitled to the regular pay in the post of Examiner. In case, they have not worked, their emoluments shall be regulated as per leave rules. In case, there is no leave due, special leave shall be granted for the aforesaid period. The applicants have also prayed for regularisation. In our considered view, this can be considered only as and when their turn comes in normal course as the applicants' present promotion is only adhoc. The respondents shall consider the same in due course as per rules.

8. In the result, the OA is allowed. No orders as to costs.

Shanta F
(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Dixit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN