

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.374/2001
DATED THE 14th DAY OF AUG, 2001

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

1. Smt.Pooja Pravin Hatkar
 2. Smt.Brenda Stevenson Gomes
 3. Shri S.R.Shetty
 4. Shri Venugopal Aiyer
 5. Smt.Yogini Borgaonkar
 6. Smt.A.S.Phanasgaonkar
 7. Kum.S.K.Chakravarthy
 8. Smt.C.M.Lewis
 9. Smt.Anuprita R Amrute
 10. Smt.S.P.Wani
 11. Smt.Lakshmi Shekar
 12. Smt.Heena Akhtar Sheikh
 13. Aruna Sunil Arekar
- ... Applicants

All are presently working as
Preventive Officers in the Customs
Department.

By Advocate Shri A.I.Bhatkar

V/s.

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue
Central Board of Excise
and Customs, North Block,
New Delhi-110 001.
 2. The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi-110 001.
 3. The Commissioner of Customs(G),
Personnel & Estt. Department,
New Custom House,
Ballard Estate,
Mumbai - 400 001.
- Respondents

By Advocate Shri M.I.Sethna

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(ORDER)

Per Smt. Shanta Shastry, Member(A)

This application is against the impugned order dated 18/5/2001 seeking to revert the applicants from the post of Preventive Officers to their substantial appointment w.e.f. 31/5/2001.

2. The applicants are working as Preventive Officers in the Office of Commissioner of Customs(G) Personnel and Establishment department, New Custom House, Mumbai. They were promoted to the post of Preventive Officers from their original post after they were duly selected by a properly constituted Departmental Promotion Committee (DPC) in accordance with the recruitment rules.

3. The post of Preventive Officer is required to be filled up in accordance with the Recruitment Rules known as the Customs Department Recruitment Rules 1979. The vacancies of the Preventive Officers are to be filled up in the ratio of 75% by direct recruit and 25% by promotion. The present case is concerned with promotion quota. UDCs, Stenos, Tax Assistants, Women Searchers with 5 years of regular service are eligible for promotion to the post of Preventive Officer. The Recruitment Rules also required that the candidates would be required to possess such physical standard and pass such written and physical tests and should be within the age limit that may be prescribed by the Central Board of Excise and Customs.

4. During the year 2000, certain vacancies arose in the grade of Preventive Officers. A circular was therefore issued on 3/5/2000 calling for willingness of eligible candidates in the prescribed format. The conditions mentioned in the circular were

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as stipulated in the Recruitment Rules. All the applicants submitted their willingness and went through the selection procedure and were finally on being selected promoted to cadre of Preventive Officers on a purely adhoc basis until further orders vide order dated 30/6/2000. After their promotion, the applicants have also undergone field training successfully. There was another circular issued on 29/9/2000 for conducting departmental examination for Apprisers, Examiners and Preventive Officers. The applicants appeared in the said examination and qualified vide results decalred on 26/4/2001.

5. In spite of this, having thus gone through the rigorous process of selection, the applicants have now been reverted to their earlier post by the impugned order dated 31/5/2000. Aggrieved by this, the applicants have prayed to quash and set aside the impugned order.

The applicants has prayed to stay the impugned order and to direct respondents not to revert them pending the disposal of the OA. The stay was granted accordingly.

6. The applicants contend that their promotion was made against regular vacancies. It is not made on the basis of seniority cum fitness but made after selection on merit. Merely because it was mentioned in the promotion order that it is an adhoc promotion the promotion of the applicants cannot be termed as adhoc and therefore they cannot be reverted from the post of Preventive Officer without following the due process of law. The learned counsel for the applicant submits that similar question

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was considered by this Tribunal in OA 834/98 filed by Shri M.P.Khot, Preventive Officer. The Tribunal quashed the reversion order vide its order dated 22/12/99 holding that the adhoc promotion was regular promotion for all practical purposes as the same was ordered by a properly constituted DPC.

7. In yet another group of OAs 386/87 and others decided on 1/12/98, the Tribunal had considered the promotions of Preventive Officers on adhoc basis and on going through the records held that adhoc promotions were infact regular promotions because they were made after holding a properly constituted DPC and after following the procedure in the Recruitment Rules.

8. Further, in the rejoinder, the applicants have submitted that some 10 UDCs/Tax Assistants/Stenos were promoted as Examiners on the same date as applicants were promoted i.e. on 30/6/2000. Their promotion was also termed as adhoc. They were reverted on 28/6/2001 and once again have been re-promoted on 5/7/2001. According to the applicants, vacancies do exist and the applicants should not have been reverted. Further, the applicants have also taken a technical plea that the respondents have violated the principles of natural justice. Any order adversely affecting the interest of the employees should not be passed without giving an opportunity to such employees. The respondent ought to have granted reasonable opportunity to the applicants to put up their say before issuing the impugned order. Further, the approval of Chief Commissioner of Customs was not taken before issuing the impugned order. It has the approval of Commissioner(G) alone. So the order is ab initio void. No reasons have been given for reversion of the applicant except to say that it is in terms of the DOP&T guidelines.

9. The respondents submit that on recruitment whether regular or adhoc has to be regulated according to the notified Recruitment Rules. According to the respondents, the applicants cannot now make a grievance after having accepted the adhoc promotion. The circular dated 3/5/2000 by which willingness of the employees was called for clearly stated that applications were called for vacancies on adhoc basis against cost recovery post and vacancies on deputation basis. They were asked to give their willingness which they gave. Further a circular dated 2/6/2000 calling the applicants for interview also specified that the promotions are purely on adhoc basis. Even the promotion order dated 30/6/2000 made it abundantly clear that the promotions are purely on adhoc basis and would not confer any benefit or seniority or any right for regular promotion to the higher grade. Having once exercised the option for availing the adhoc promotion, the applicants are now estopped from claiming regular promotion. The respondents have also raised the point that since the promotion was on adhoc basis, many seniors might not have opted for the same. Therefore, if the applicants' contentions that their promotion was on regular basis are accepted, then many of the seniors would become junior to the applicants.

10. The Ministry of Finance have issued guidelines on adhoc promotions as well as the Ministry of Personnel, Public Grievances and Pensions. It has been specified in these guidelines that no adhoc promotion should be allowed to continue beyond the period of one year and if the same is to be continued beyond the period of one year, then the prior approval of the

DOP&T should be sought. The respondents have further stated that vacancies have ceased to remain and therefore these adhoc promotees are being reverted. The Government cannot pay salary for two Officers against one sanction post. The applicants have been granted adhoc promotion against the vacancies caused due to some Preventive Officers going on deputation to different Airports as well as due to cost recovery post being vacant. Now the deputationists have returned, they have been repatriated and therefore, way has to be made for them. There is no fresh sanction of post. 19 deputationists have been repatriated, there is already excess number of promotees. Had regular vacancies been available, officers working on adhoc basis since 1995 would have been regularised, but it is not so.

11. The applicants had sufficient time to seek departmental remedy after the issuing of the impugned order but they failed to avail of the same. Not even a single representation was received from the applicants against their reversion. Since the respondents had at no time indicated to the applicants that they were promoted on regular basis against regular vacancies, their promotion was solely on adhoc basis. There is no substance in the contention of the applicants that their promotions were on regular basis and therefore they cannot be reverted. The procedure as laid down in law can be followed only if the person promoted acquires a right to the promoted post. In this case the applicant have not acquired any rights whatsoever to the post of Preventive Officer and therefore no action as laid down under Article 311 of the Constitution is called for.

12. The learned counsel for the applicants while reiterating the earlier arguments has further argued that they had gone through rigorous method of selection as for regular promotion. Had it been a mere adhoc promotion, they could not have been subjected to meticulous selection made by the DPC. Infact, the selection was based on seniority cum merit as is evident from the fact that applicant nos.2,3 and 4 though much junior in eligibility list were placed higher in the select list. The respondents have been appointing officers on adhoc basis for past many years without following the basic norms of adhoc promotion, i.e. seniority. All promotions in the Customs Department are initially made on adhoc basis. For the past 8 to 9 years, no promotions have ever been made on a regular basis in the first instance. All orders are invariably made terming the promotions as adhoc promotions as in the case of the applicants.

13. The applicants further contend that the respondents while claiming that the applicants were promoted against the post vacated by deputationists and that the deputationists have been repatriated have nowhere indicated as to where the deputationists have been posted on their repatriation. No one to one position has been shown by the respondents. The persons returning from deputation also have to be replaced by another set of deputationinists, therefore it cannot be said that there are no vacancies. The respondents have also not stated the names of the alleged seniors who did not consider it necessary to opt for the so called adhoc promotion.



14. Even the guidelines of the Ministry of Finance and the DOP&T have not said that the applicants should be reverted. They only talk about the need to restrict adhoc appointments to the minimum and in case of need to obtain prior approval of the DOP&T. Instead of getting the approval of DOP&T, the respondents have resorted to the drastic step to revert the applicants. Had the applicants promotion been adhoc, they would not have been sent for training, for such training is given to only those who are expected to continue and not to those who are on short term basis.

15. The applicants have stated in their rejoinder that the respondents have been submitting to the Central Board of Excise and Customs every month the vacancy position in each category. The applicants also submit that such a report submitted to the Board on or after 1/1/2001 shows the existence of about 30 vancancies at Mumbai Custom House alone which have arisen on account of either the retirement on superannuation or voluntary retirement of existing officials or even of those who expired while in service. The applicants have submitted a list of the same.

16. The applicants have also contended that it is not correct to say that they have not represented to the authorities on receipt of the reversion order. Infact, the applicants had met the Chief Commissioner of Customs on 21/5/2001 and he had assured them to look into the matter. Further, in a letter dated 13/6/2001, addressed to the General Secretary of Mumbai Custom

Preventive Staff Association, the Assistant Commissioner of Customs in charge of personnel and establishment had informed them that 18 posts of Preventive Officers on cost recovery post has been sanctioned from time to time and further propost for requirement of 12 Preventive Officers for new container freight stations were forwarded to the Ministry of Finance for Jawahar Custom vide letter dated 15/2/2000.

17. The applicants have therefore vehemently argued that their promotions are, for all practical purposes, regular promotions but for the term "adhoc" used in their promotion order. They apprehend that they have been reverted for extraneous consideration as the respondents want to promote some other officers against them on adhoc basis ignoring the claim of the applicants. Adhoc employees cannot be replaced by other adhoc employees. The applicants have also urged that it is not the case of the respondents that the applicant are unsuitable. There are no complaints about their work, no departmental proceedings have been initiated against them. No posts have been abolished. It is not again the case of the respondents that regularly selected candidates have come and so the applicants have to make way for them. It is not a case of where there are no vacancies available. Number of officers have been promoted on adhoc basis since 1994 and are so working since last five to six years. It is totally unfair on the part of the respondents to revert the applicants.

18. We have heard the learned counsel for the applicants as well as the respondents. In order to ascertain the exact position regarding the number of vacancies, the repatriation of

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deputationists and the procedure followed for selecting and promoting the applicants to the post of Preventive Officer, we had sought the relevant record from the respondents. Accordingly, the respondents have submitted the file containing the proceedings of the DPC as well as the file relating to the position of vacancies and adhoc promotions granted. There is no denying that the respondents promoted the applicants after carefully following the procedure laid down in the Recruitment Rules. The selection has been made on merit from amongst those who willingly opted for the same. The term used is adhoc. The applicants selection is entirely as per regular selection. The respondents however meant it to be only adhoc promotion, completed the training successfully, appeared in the departmental examinations, still the fact remains that many employees are continuing on adhoc basis since 1994. It is seen from the record produced by the respondents 172 Officers are working as Preventive Officers on adhoc basis from 9/12/94 to 30/6/2000. Of these 141 Officers have been working for more than one year and 31 Officers less than one year as on 1/7/2000. The applicant's were the last to be promoted on 30/6/2000. The applicants adhoc promotion cannot be treated as regular one ignoring all the adhoc Officers and others who have not given willingness on account of the fact that promotion is adhoc and filling of post is not on regular basis. The existence of vacancies does not create any right in in favour of applicant to ask respondents to fill the posts. Even adhoc officers numbering 172 were not regularised. We have perused the available record. We find that many

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employees have been promoted on adhoc basis since 1994 and are continuing to be on adhoc basis. A few of them have been regularised from time to time. It is seen from the record produced by the respondents that 172 Officers are working as Preventive Officers on adhoc basis from 9/12/94 to 30/6/2000. Of these 141 Preventive Officers have been working for more than one year and 31 Preventive Officers for less than one year as on 1/7/2000. The applicants were the last to be promoted on 30/6/2000. Promotions against vacancies occurring due to cost recovery post, deputation post have been made on adhoc basis. The actual cause for present reversion of the applicants appears to be the letters dated 16/6/2000 of the Ministry of Finance and the letter dated 14/12/99 of the DOP&T. All they say in these two letters is that necessary steps should be taken to curtail the practice of adhoc appointments as they take recourse to file petitions before courts for regularisation of their services can be avoided. Also adhoc appointments required to be continued beyond the period of one year should be with the prior approval of the DOP&T. It is seen from the record that the figure of excess adhoc Preventive Officers has been changing from time to time. Also from the few letters submitted of the repatriation orders of the deputationists, it is seen that seven deputationists have been relieved in the month of February, 2001 on different dates. Some others have been repatriated w.e.f. 27/11/2000, 29/9/2000, 3/10/2000 and 27/1/2001. As rightly pointed out by the applicants, the respondents have not submitted any one to table to show that a particular applicant was appointed in place of a particular deputationist and since that

deputationist has now returned, the applicant has to make way for him. Infact, the latest repatriation order is on Feb, 2001, whereas the applicants have been reverted in May 2001. There were deputationists who were relieved as far back as in September to November 2000. Had the applicants really been promoted against the post vacated by these deputationists then action should have been taken at that time itself to revert the applicants. But the applicants have been continued till 31/5/2001. Therefore it does not establish any one to one relation between the applicants and the deputationist whose orders of repatriation have been produced by the respondents. Further, these deputationists might have been replaced by other deputationists and vacancies could have occurred. There is no mention about this aspect anywhere in the file produced by the respondents.

We have therefore to hold that the reason the deputationists have been repatriated could not be accepted for reverting the applicants.

19. We also find a letter dated 18/5/2001 addressed to the Ministry of Finance indicating the total sanctioned strength of Preventive Officers on 1/1/2001 as well as sanctioned strength against the cost recovery post. The total strength is shown as 868 including 105 posts of cost recovery. The total working strength is of 824. Infact, the respondents have sent a proposal seeking regularisation of adhoc promotees to the Ministry of Finance. This reference also includes the query as to whether the applicants who are completing their one year tenure on 30/6/2001 should be reverted or should be allowed to continue.

Even before a reply has been received from the Ministry of Finance, the respondents have already reverted these applicants. We agree with the applicants that since there is need for work, the respondents could have approached the DOP&T for seeking their approval for continuing the applicants beyond the period of one year.

20. The applicants have also relied on two judgements in the case of Sunderlal V/s. Union of India 1989 10 ATC 337 and State of Uttar Pradesh & Ors. V/s. Saughar Singh 1974 AISLJ 474 and the decision of this Tribunal dated 1/12/98 in the matter of PKG Kurup & 12 Ors V/s. Union of India in OA 386/97 alongwith a group of OAs, as well as OA No.790/98 and 834/98. We have perused these judgements and we find that OA Nos.790/98 and 834/98 are not really relevant in this case. The applicants in those OAs had been charge sheeted and then reverted. There was a cause for reversion. In the present case, the applicant has not been charge sheeted but only for want of vacancies, the applicants have been reverted. In the other case of PKG Kurup & 12 Ors (supra), the matter for consideration was about the counting of the adhoc service for purpose of seniority. Though in passing it was held by the Tribunal in this case that the promotion of the applicants therein was not a case of mere adhoc and stop gap arrangements made dehors the rules and therefore it can safely be concluded that the initial adhoc promotion of the applicants were as per the Recruitment Rules. These cases however cannot help the case of the applicant. In the case of Sunderlal, the petitioners were reverted after four years of promotion on the ground of erroneous procedure. This case too

cannot come to the aid of the applicants, as the applicants had not even put in one year service when reverted. In the State of Uttar Pradesh V/s. Saughar Singh, it has been held that Article 311 of the Constitution will be attracted if the reversion order entailed any penal consequence, that the reversion of the applicants therein was singled out on what was no administrative reason for this reversion. The foundation of the order of reversion was the adverse entry made in the character roll of the applicant and therefore it was deemed to be an order passed by way of punishment though it shows the order to be or mere reversion. It is seen from these judgements that the applicants therein were on a different footing and they cannot be made applicable in this case.

21. Since the respondents have not established in any way to the full satisfaction that there are no vacancies and there is no work at all so that the applicants can be reverted, in our considered view the applicants deserve to be continued in the higher post of Preventive Officer on adhoc basis. The respondents however are not prevented from seeking the approval of DOP&T to continue these applicants beyond the period of one year. Even in future, there is no work for the post of Preventive Officer meant for cost recovery, the respondents are free to take action in accordance with law keeping in mind that amongst adhoc selectees, the last person in merit has to go first.



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22. In the facts and circumstances of the case, the OA is allowed. The impugned order dated 18/5/2001 is quashed and set aside and the respondents are directed to continue the applicants in the post of Preventive Officer further till regular incumbents become available against the unfilled vacancies. No orders as to costs.

Shanta
(SMT. SHANTA SHASTRY)
MEMBER(A)

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

abp.