CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * *

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 27 FEB 1989

APPLICATION NO (S) 1645 & 1690 /88(F)

W.P. NO (S) /

Applicant (s)

Shri G.D. Ramegowda & another

V/s

Respondent (s)

The Secretary, Central Board of Excise & Customs, New Delhi & 2 Ors

To

1. Shri G.D. Ramegowda
   Lower Division Clerk
   Office of the Collector of
   Central Excise
   Headquarters Office
   Central Revenue Buildings
   Queen's Road
   Bangalore - 560 001

2. Shri R. Govinda
   Lower Division Clerk
   Office of the Assistant
   Collector of Central Excise
   Integrated Divisional Office
   Bellary

3. Shri M. Narayanaswamy
   Advocate
   844 (Upstairs), V Block
   Rajajinagar
   Bangalore - 560 010

4. The Secretary
   Central Board of Excise & Customs
   North Block
   New Delhi - 110 001

5. The Collector of Central Excise
   Central Revenue Building
   Queens Road
   Bangalore - 560 001

6. The Collector of Central Excise
   Club Road
   Belgaum

7. Shri M.S. Padmarajaiah
   Central Govt. Stng Counsel
   High Court Building
   Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY/WITHDRAWAL/REJECTION~~ passed by this Tribunal in the above said application(s) on 14-2-89.

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH:BANGALORE

DATED THIS THE 14TH DAY OF FEBRUARY, 1989

PRESENT:HON'BLE SHRI JUSTICE K.S. PUTTASWAMY ....VICE-CHAIRMAN

HON'BLE SHRI L.H.A. REGO ...MEMBER (A)

APPLICATION NO.1645 & 1690/88

1. G.D. Ramegowda,
s/o Dasappa,
aged 31 years,
Lower Division Clerk,
Office of the Collector
of Central Excise,
Headquarters Office,
Bangalore .... Applicant in A.No.1645/88

2. R.Govinda,
s/o Y.Bhimappa,
aged 33 years,
Lower Div. Clerk,
Office of the Assistant
Collector of Central
Excise, Integrated Divisional
Office, Bellary. ... Applicant in A.No.1690/88

(Shri M. Narayanaswamy.....Advocate)

1. The Secretary,
Central Board of Excise and
Customs, North Block,
New Delhi.

2. The Collector of Central
Excise, Central Revenue Bldgs.
Queens Road, Bangalore. ... Respondents in A.Nos. 1645/88 and 1690/88

3. The Collector of Central Excise,
Club Road, Belgaum. ... Respondent in A.No. 1690/88

(Shri M.S. Padmarajaiah.....Advocate)

This application having come up for hearing before this Tribunal to-day, Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman, made the following :-

.....2/-

O R D E R

As the questions of law that arise for determination in these cases, are common, we propose to dispose of them by a common order.

2. Sriyuths Shri G.D. Rame Gowda and R. Govinda, applicants in A.Nos.1645 & 1690 of 1988, joined service in the office of the Collector of Central Excise, Bangalore, in Group 'D' posts on 21.12.1979 and 24.6.1976 respectively. On the result of a departmental examination held in 1985, the Collector of Central Excise and Customs, Bangalore (Collector) by his order no: 11/31/23/85/A-1 dated 19.3.1986(Annexure-A) promoted the applicants as Lower Division Clerks(LDCs) which they took charge on 21.3.1986. In conformity with clause 3 of the said order, the applicants passed the 'typing test' within the time allowed therein. On this they should have been normally continued and confirmed as LDCs. But ~~also~~ also that did not happen. On the other hand, the Collector by his order No.11/31/29/87-A-1 dated 28.9.1988(Annexure-C) reverted the applicants with immediate effect. In these separate but identical applications made under Section 19 of the Administrative Tribunals Act of 1985 ('the Act') the applicants have challenged their reversions, the operation of which has been stayed and continued under the Act.

3. In justification of the impugned order, the respondents have filed their reply and have produced their records.

....3/-

4. Shri M. Narayanaswamy, learned advocate appeared for the applicants. Shri M.S. Padmarajaiah learned Senior Central Government Standing Counsel appeared for the respondents.

5. Shri Narayanaswamy contends that the promotions of the applicants on the results of a competative examination held in 1985 and they having passed the typing test within the time allowed in the Order of the Collector being legal and valid, there was no justification for Government, the Central Board of Excise and Customs(Board) and the Collector to hold otherwise and revert the applicants to Group 'D' posts.

6. Shri Padmarajaiah contends that the promotions of the applicants were contrary to the recruitment rules the orders made thereon and that illegality had only been set right by the Collector and the same did not justify our interference.

7. In order to appreciate the rival contentions, it is necessary to notice a few more facts which are not also in dispute.

8. Recruitment to the posts of LDCs, which are Group 'C' posts in the Department is regulated by the Central Excise and Land Customs Department Group 'C' posts Recruitment Rules, 1979 (Rules), made by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution and published in Part II Section I of All India Gazette dated June 2, 1979 on pages 1446 and 1461. Serial No.7 of the schedule to these rules dealing with the recruitment to the posts of LDCs, which is material reads thus:

....4/-

S. No.	Name of Post	No.of Posts	Classi-fication of posts	Scale of Pay	Whether Selection Post or non-sele-ction post	Age for direct recruits	Educational and other qualifica-tions required for direct recruits
1	2	3	4	5	6	7	8
7.	Lower Division Clerk	2393	General Central Service Group 'C' Non-gazetted Minist-erial	Rs 260-6-290-EB-6-326-8-366-EB-8-390-10-400	Not appli-cable	18-25 years relaxable upto 35 years in the case of Govt. servant working in the department	(i) Matri-culation or equiva-lent quali-fications; (ii) Minimum speed of 30 words per minute in English typewriting or 25 words per minute in Hindi typewriting.

Whether age and educat-ional quali-fications prescribed for direct recruits will apply in the case of promotees	Period of pro-bation if any	Method of recruit-ment whether by direct recruit-ment or by promo-tion or by deputa-tion/transfer and percenta-ge of the vacancies to be filled by various methods	In case of recruitment by promo-tion/depu-tation/ transfer, grade from which pro-motion/ deputation/ transfer to be made	If a Departmental Promotion Committee exists what is its composition	Circumstan-ces in which Union Public Service Commission is to be consulted in making recruit-ment.
9	10	11	12	13	14
Not appli-cable	2 years	By direct recruitment Note: (1) 10% of the vacan-cies in the grade of Lower Division Clerk to be filled by direct recruitment, will be re-served for	Not appli-cable	Group 'C' Depart-mental promotion Committee: Chairman-Collector of Central Excise. Members: (1) Senior-most officer of the Collec-torate concer-ned working at Headquart-ers.	Not applicable

.....5/-

9	10	11	12	13	14
		being filled up by Group 'D' employees (borne on regular establishment) subject to the following conditions namely:- (a) selection would be made through a departmental examination confined to such Group 'D' employees who fulfil the requirement of minimum educational qualification, namely, matriculation or quivalent: (b) the maximum age for this examination would be 45 years (50 years for Scheduled Caste or Scheduled Tribe candidates). (c) at least five years service in Group 'D' would be essential. (d) the maximum number of recruits by this method would be limited to 10% of the vacancies in the cadre of Lower Division Clerks occurring in a year : unfilled vacancies would not be carried over. Note: (2) Educationally qualified Laboratory Attenders who have initially	(2) Senior-most officer of the Collectorate concerned working outside Headquarters. (3) Assistant Commissioner of Income Tax. (4) Where two or more Collectorates have common cadres, the other Collector shall also be a member of the Departmental Promotion Committee. (5) Where none of the members at serial numbers (1) to (4) above belongs to Scheduled Caste or Scheduled Tribe a Group 'A' Officer of the Collectorate belonging to Scheduled Cast or Scheduled Tribe, if available, shall also be associated as a member of the Departmental Promotion Committee. Note: Where two or more Collectorates have common cadres the Senior-most Collector among the Collectors shall be Chairman.		

.....6/-

9	10	11	12	13	14
		been recruited through Employment Exchange can also compete for the post of Lower Division Clerk against 10% vacancies reserved for Group 'D' employees by allowing them to deduct the period of service rendered as Laboratory Attender including service, if any, in Group 'D' earlier, from their actual age for the purpose of reckoning age limit.			

In their reply, the respondents have asserted that these entries have been amended in 1982. But at the hearing, Shri Padmarajaiah who was unable to produce amendments made by the President in exercise of his legislative powers under the proviso to Article 309 of the Constitution, did not stick to the same. On this, we proceed to examine that these entries have remained as promulgated on 2nd June, 1979, without any amendments so far.

9. Before the Board, the Customs and Central Excise Employees Federation, (Federation) the Apex Body of employees of the department represented for modifying the recruitment rules relating to LDCs. On that, the Board by its letter no. F.No. 8-12014/3/82-Ad.III-B dated 9th December, 1982(Annexure-R-1) addressed to all the Collectors conveyed its decision in these words:

.....7/-

"Sir,

I am directed to say that the Customs and Central Excise Exployees Federation have requested that the examination for filling up of 10% vacancies in the LDC Grade reserved for educationally qualified Group 'D' employees might be declared as qualifying one. The above request of the Federation has been considered in consultation with the Department of Personnel & A.R.S. and it has been decided that:

a) the departmental examination provided in the Recruitment Rules for the post of Lower Division Clerk shall hereafter be a qualifying one; and

b) Out of the 10% quota, 5% of vacancies in a calender year shall be filled on the basis of seniority subject to rejection of unfit and the remaining 5% on the basis of a qualifying examination with typing test to be held departmentally.

2. Necessary amendment to the Central Excise and LandCustoms Group 'C' posts Recruitment Rules is being issued separately."

On this letter which was binding on them, the Collectors have regulated the examination and the recruitment to the posts of LDCs.

10. On the aforesaid communication of the Board the Collector conducted an examination on 28.9.1983 in which 79 persons including Shri R. Govinda appeared in which 23 persons including Shri R. Govinda were successful. In the years 1984 and 1986 no examinations were held. On 20th December, 1985 an examination was held for the year 1985 in which the applicants and 96 others appeared in which 14 including the applicants were successful. In that examination the applicants secured Rank nos. 1 & 2. On the basis of these rankings and the vacancy position, the Collector had promoted the applicants on 19.3.1986.

11. On the promotions of the applicants there was correspondence between the Collector and the Board. On that the Board in its letter no. F.No.A.12034/3/SSC/87-Ad.III.B dated 2.9.1988,

informed the Collector thus:

" Subject:- Estt. Recruitment under 10% Quota in the grade of L.D.C. reserved for qualified Group 'D' Staff - Clarification - Regarding.

.....

Sir,

I am directed to refer to your letter C.No.II/31/29/87A.1 dated 22.7.87 on the above subject and to say that the matter has been considered in consultation with Department of Personnel and Training.

2. It has been decided that the Gr.'D' employees who qualified the 1982 examination may be appointed first to the post of L.D.C. by reverting the 1985 appointees and vacancies of 1985, 1986 and 1987, if any, may be filled up first from the 1982 panel. The 1983 employee, need not, however, be reverted as he has already been confirmed in the LDC's grade.

3. This will involve refixation of seniority in the LDCs grade also. The persons qualified in the 1982 examination will be senior to the ones who had qualified and appointed as L.D.C. on the basis of 1983 and 1985 examination. You are therefore, requested to take action for re-fixing the seniority of these employees accordingly i.e. appointees on the basis of earlier qualifying departmental examination, would be senior to those qualifying in the latter examinations.

4. In this connection an extract from the advice of Department of Personnel & Training is also enclosed.

Please acknowledge receipt of this letter."

On this, the Collector with no option left, by his order dated 28.9.1988 reverted the applicants without affording them an opportunity to state their case.

.....9/-

12. An order of reversion results in serious civil consequences can hardly be doubted. If that is so, then even if there was justification for reversions, it was necessary for the collector to issue a Show Cause Notice to the applicants, consider their representations and then make a speaking order thereon, which would have helped the applicants and this Tribunal to decide their validity satisfactorily. In making the reversions, the Collector had contravened the principles of natural justice. On this short ground itself, we must annul the reversion of the applicants.

13. In its letter dated 9.12.1982 reproduced earlier, the Board had decided to modify the overall quota of 10% earmarked to Group 'D' in the manner stated therein which runs counter to what had been stipulated in the Rules. We do not doubt the power of the Board to take that decision and move the Government to take steps to amend the Rules to effectuate its decision. But before the Rules are amended and gazzetted, it was not open to the Board to direct the Collectors to act in conformity with its decision only. We have found to our dismay that the Rules had not so far been amended. We are schocked and surprised on the ignorances of the Board, which cannot even exercise executive powers available to Government under Article 73 of the Constitution. This legal position which has never been in doubt has been reiterated by the Supreme Court in Union of India vs. Somasundaram Visvanath and others (1989) 1 Supreme Court Cases 175

From this it follows that whatever had been done contrary to the Rules will be invalid, As to how and in what manner the same should be re-done, is a matter that should be left open to be decided by the authorities themselves.

14. Unfortunately the reply filed did not clarify the position. We regret to record that the reply is filed in a mechanical way as in many cases before us. We had to wade through the mass of papers, see the rules, ascertain from the counsel and officers assisting him on the simple question as to whether the amendments to the rules had been effected or not and then reach our conclusion. We have generally found that replies filed are not to the point and are filed mechanically virtually reproducing the parawise replies furnished by an officer with no legal training at all. We find that notwithstanding observations in Shenva's case (vide Para 74) the situation has not improved. We do hope and trust that Government will pay attention to this aspect and urgently remedy the situation.

15. In its letter dated 2.9.1988, referred to in the reply, the Board has stated that those who had been confirmed in 1983 need not be disturbed, on the ground that they had already been confirmed. But in doing so, the Board failed to notice that persons already confirmed can also be deconfirmed in conformity with law. Whether this should be done or not is for the authorities to examine and decide.

16. On the view we have taken we leave open all other questions.

17. In the light of our above discussion, we allow these applications in part, quash the impugned order of the Collector reverting the applicants. But this order does not prevent the Collector and other authorities from re-examining the whole matter re-adjusting the promotions and reversions in conformity with law and the observations made in this order.

18. Applications are disposed of in the above terms. But in the circumstances of the cases we direct the parties to bear their own costs.

Sd/-
VICE-CHAIRMAN

Sd/-
MEMBER (A) 4-2-1989

TRUE COPY

DEPUTY REGISTRAR (JDL) 2/2
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE