

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-38.

Dated: 28 FEB 1994

APPLICATION NO(s) 657 of 1993.

APPLICANTS:

Anant S.Ghooli

TO.

RESPONDENTS:

v/s.

Secretary/M/s.Finance,N Delhi & Others.

1. Sri.R.Chandrakanth Goulay,  
Advocate, No.90/1, II Block,  
Thyagarajanagar, Bangalore-28.
2. The Collector of Central Excise and Customs,  
C.R.Buildings, Queen's Road, Bangalore-1.
2. Sri.M.S.Padmarajaiah, Sr.Central Govt.Stng.Counsel,  
High Court Building, Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by  
the Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the  
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal  
in the above mentioned application(s) on 21-02-1994.

gm\*

olc  
Issued on 28/2/94

for *[Signature]*  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.657/93.

MONDAY THIS THE 21ST DAY OF FEBRUARY, 1994

SHRI V. RAMAKRISHNAN .. MEMBER (A)

SHRI A.N. VUNNAJARADNYA .. MEMBER (J)

Sri Anant S. Ghooli,  
S/o Shantacharya Ghooli,  
aged about 43 years,  
Working as Tax Assistant  
in the Office of the Asst.  
Collector of Central Excise,  
Divisional Office,  
Nehrunagar, Belgaum.

... Applicant

(By Advocate Shri R. Chandrakanth Goulay)

Vs.

1. Ministry of Finance,  
represented by its Secretary,  
Dept. of Revenue,  
North Block, New Delhi-1.
2. Central Board of Excise and Customs,  
by its Chairman,  
North Block New Delhi-1.
3. The Collector of Central Excise  
and Customs, Queen's Road,  
C.R. Building, Bangalore - 560 001. ... Respondents

(By Advocate Shri M.S. Padmarajaiah)  
Central Govt. Sr. Standing Counsel:

ORDER

Shri A.N. Vunjanaradhya, Member (J).

In this application, the applicant is aggrieved by the intimation dated 1.4.1992 (Annexure-A4) by which he was informed that because he was blind in one eye, he was not considered for promotion as Inspector (ad-hoc) as also the rejection of his two representations in Annexures-A7 and A9 respectively dated 23.9.1992 and 11.3.1993, and therefore he has filed this application under Section 19 of the A.T. Act 1985.

2. Briefly stated, the case of the applicant is as below:  
The applicant, after his recruitment as Physically Handicapped (PH for short) person, resigned his job in Military service where he was earlier appointed as Physically Handicapped person and joined as Upper Division Clerk in the Department of Central Excise and Customs. The applicant had passed promotional examination of Ministerial Officers being qualified for promotion to the grade of Inspectors of Central Excise (ICE for short) held in December, 1987, the results of which were declared on 19.4.1988. In 1988, the applicant was appointed as special pay U.D.C. considering his good work in the cadre of U.D.C. On the basis of seniority and suitability, the applicant was promoted as Tax Assistant in September, 1990 (Annexure-A1). Regard being had to the merit of the applicant, he was given additional work as Tax Assistant which he had turned out in the Divisional Office at Belgaum. Normally, there would be about 39 ICEs in the Division out of whom only 4-5 persons will be on preventive duty requiring <sup>work</sup> field of executive nature involving movements for the purpose of prevention of evasion of Excise Duty and illegal activities of import and export. The remaining ICEs will be assigned the duties of the nature of technical, statistics, range work and head quarters work which are in the nature of office duties and are non-executive nature. Therefore, the applicant, <sup>claims that though he</sup> who is Physically Handicapped cannot be appointed as ICE for field work, <sup>he</sup> can still be promoted as ICE to perform the duties of non-executive nature. The applicant has a visionary defect in one eye and he was recruited in 3% reservation for such personnel. The applicant along with others appeared for written examination held for the purpose of ICE and since he secured more than 50% of marks, he was called for interview for the post of ICE as in Annexure- 1.

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But, he was not promoted to that post of ICE but was promoted only as Deputy Office Superintendent Level II (DOS LII for short) which is unjustifiable and illegal. The representations made by the applicant were not properly considered and therefore the intimations as per Annexures-A4, A7 and A9 are required to be quashed. The instructions subsequently issued would make it abundantly clear that the reliance placed by the respondents on communication dated 7.5.1983 is not at all applicable. Pleading that applicant is physically fit except for visionary defect in one eye, he urges that he is entitled to be promoted as ICE or in the alternative as Dy. Office Superintendent Level II with retrospective effect. Thus, the applicant seeks the following reliefs:

- i) Call for the relevant records;
- ii) Issue an order of direction directing the orders at Annexure-A4 bearing C.No.II/3/20/91-Estt, dated 1.4.1992, Annexure-A7 bearing C.No.II/3/59/91 Gen.Sec.dated 23.9.1992 and Annexure-A9 bearing C.No.II/3/59/91 Con.Sec.(PF.II) dated 11.3.1993 issued by the respondents as illegal and void;
- iii) Issue a direction to the respondents to consider the case of the applicant for promotion to the post of Central Excise Inspector; or in the alternative
- iv) Issue a direction to consider his case for promotion to the post of Deputy Office Superintendent Level-II with effect from the date the applicant is entitled to without prejudice to his right to have his case considered for the promotion to the post of Central Excise Inspector and award costs, in the interest of justice.

3.  
The respondents opposed the application on several grounds contending interalia that communication dated 5.7.1983 annexed to the reply of Respondents still holds the field and the reservation for promotional quota for PH persons is only in respect

of identified posts and as the post of ICE is not one which is identified, the applicant is not entitled to the promotion to that cadre and further that applicant who did not express his willingness for being promoted to DGS Level II, he was not given that promotion and therefore he is not entitled to seek retrospective promotion to that cadre.

4. We have heard Shri C.R. Gowlay, the learned counsel for the applicant and Shri M.S. Padmarajaiah, the learned senior Central Govt. standing counsel for the respondents and perused the records.

5. There is no dispute that the applicant Shri Anant S. Ghooli is a PH person, in that he has only one eye and there is no vision in the other eye which is blind. Applicant was appointed as UDC in the department of Central Excise as a PH person in the reserved quota. It is true that among others, he was also posted to special pay post regard being had to his seniority and suitability as well as willingness. To some extent it may indicate the merit of the applicant also. But, this alone will not entitle the applicant to get promotion to the executive cadre of ICE as of right. It is also true that the applicant did pass the departmental examination for promotion to the grade of Inspector held in December, 1987 as can be seen from Annexure-1 because he had secured more than 50% of the marks in that examination. Though, in the seniority list, there is an indication before the name of the applicant as PH indicating that he is physically handicapped, the same is not found in Annexure-1 against the name of the applicant indicating that the same was lost sight of when his name was shown as the person in the list of candidates who appeared for promotional examination of Ministerial Officers for

promotion to the grade of Inspectors held in December, 1987. Subsequently, when the department noticed that applicant is physically handicapped, he was again required to get himself examined medically and the medical certificate did indicate that the applicant is one eyed person and he is blind in the other eye and therefore he was not fit to be promoted to the post of executive nature viz., the ICE. However, because the applicant had not given his willingness for being promoted as DOS Level.II which is a non executive post, he was not promoted immediately and perhaps because in this application he had alternatively sought the relief of promotion as DOS Level.II, he was given such promotion after this application was filed during 1993.

6. To appreciate the contentions of the learned counsel for the applicant that in view of subsequent instructions, the reliance placed by the respondents on the communication dated 7.5.1983 is no longer applicable, it is necessary for us to quote the same:

"The Board has had under consideration the question whether it would be in fitness of things to appoint a one-eyed person to the post of Inspector of Central Excise in the Central Excise Department. The matter has been considered in consultation with the Ministry Health and F.W. They have advised that as in the case of Preventive Officers in the Customs Department, the candidates should not be recruited as Inspector of Central Excise if they have only one eye. The Board accordingly decided that a one eyed person should not be recruited to the post of Inspector of Central Excise in the Central Excise Department."

In this communication, it specifically stated that the Central Board of Excise and Customs (CBEC for short) have decided that a one eyed person should not be recruited to the post of ICE in the Central Excise Department. To examine whether any subsequent instructions or communications modified this view of CBEC, we have

to necessarily refer to the relevant papers attention to which the learned counsel for the applicant has drawn. The learned counsel for the applicant drew our particular attention to Annexure-3 to the rejoinder which is a report of the committee of identification of jobs in Group 'A' and 'B' posts for PH. He also drew our <sup>✓</sup>particular attention to para 5 of this report wherein it is stated that the committee would however recommend that there should be no bar in considering the handicapped person for recruitment to such services, referred to therein for a group of posts only on the clear understanding that they would be promoted only upto a level and a promotion beyond that level may not be possible in the service or group of posts. Anyhow, the reference in this report is only to the identified posts. It is not the case of the applicant that any post of ICE is identified for being filled up by promotion of <sup>✓</sup>a handicapped person or by direct recruitment of a handicapped person. Therefore, reliance placed by the learned counsel for the applicant on this Annexure-3 is not of any assistance to the applicant.

7. The learned counsel for the applicant next drew our attention to Annexures-A10, A11 and A12. In all these three notifications, the reservation for <sup>✓</sup>PH person is only against the identified Group 'C' and Group 'D' posts and in respect of the posts reserved for PH persons. It is not necessary for us to go deep into this aspect of the matter because it is nobody's case that any post of ICE is identified or reserved for PH persons. Therefore, the contention of the learned counsel for the applicant that the notifications dated 5.12.85, (Annexure-A10), 20.11.1989 (Annexure-A11) and 3.3.1976 (Annexure-A12) would indicate that

the communication dated 7.5.1983 annexed to the respondents' reply cannot be made applicable and the same should be ignored, cannot be accepted as correct. We are firmly of the view that the communication dated 7.5.1983 quoted supra is the one which holds the field and the several documents referred to above and from which the learned counsel for the applicant sought support are not applicable and are not relevant<sup>at all</sup>. If at all any post of ICE was identified as reserved for PH person, then the contentions of the learned counsel for the applicant would have held some water. Thus, we find no force in the contentions of the learned counsel for the applicant and reject the same.

8. It is relevant for us to point out that the applicant had not challenged the vires of the communication dated 7.5.1983 and therefore it is not for us to go into the validity of the said communication. If at all it is the case of the applicant that normally there would be considerable number of ICE in the Division Office, who are not required to attend to the duties of executive nature, but are required to attend only to the duties which are required to be attended to in the office and therefore he would be entitled to get promotion to the grade of ICE to discharge such duties, which the respondents dispute, it is for him to represent to the Board of Central Excise and Customs to identify such posts and seek his promotion. But, in this application he is not entitled to urge that he should be promoted to the grade of ICE in spite of the communication dated 7.5.1983 and seek to avoid the said communication on the ground that it is not applicable or that it is superseded. We have already explained that none of the subsequent notifications or communications have the effect of superseding the communication dated 7.5.1983 and the applicant is still governed by the same.



9. In view of what is discussed above, the applicant cannot get the relief of quashing the intimations at Annexures-A4, A7 and A9 and seek promotion to the cadre of ICE in this application. Even the alternative relief of promotion to DOS Level II retrospectively is also not open to the applicant to be claimed in as much as he has not given his willingness for such promotion at the appropriate point of time. Because, he has made his alternative prayer in this application, the department, it looks, must have felt that it was not necessary to seek the willingness of the applicant for promotion to the cadre of DOS Level II and accordingly he was given that promotion. Thus, the applicant cannot claim retrospective promotion to the cadre of DOS Level II. At this juncture, when he had not expressed his willingness for such promotion at the appropriate point of time.

10. In the result, we find no merit in this application and therefore <sup>we</sup> hereby dismiss the same. However, before parting, we observe that the applicant, if he so desires, may make a detailed representation to the respondents explaining the nature of duties that can be performed even by a PH person like the applicant with only one eye and seek to identify such posts and seek promotion. If at all, the applicant were to make such representation within one month from the date of receipt of a copy of this order, we deem it appropriate to direct the respondents to examine such representation and take appropriate decision within a period of six months thereafter.



TRUE COPY

*S. Chandra*  
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SECRETARY  
CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

*Sd/-*  
(A.N.VUJJANARADHYA)  
MEMBER (J)

*Sd/-*  
(V. RAMAKRISHNAN)  
MEMBER (A)