

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 23 5 94

APPLICATION NUMBER: 941 of 1993.

APPLICANTS:

Sri B. Krishnarao. v/s
To.

RESPONDENTS: Collector of Customs,
Bangalore and others.


- ① Sri. H. S. Ananthapadmanabha,
Advocate, No. 108, NHCS Layout,
Third Stage, Fourth Block,
Basaveshwaranagar, Bangalore-79.
- ② The Deputy Collector (P&V),
Customs and Central Excise,
P.B. No. 5400, Queen's Road,
BANGALORE - 1.
- ③ Sri. M. S. Padmarajiah,
Senior, Central Govt Stng. Counsel,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 19-05-1994

Issued on
23/5/94
R.

o/c

for 
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A.NO.941/93

THURSDAY THIS THE NINETEENTH DAY OF MAY 1994

Shri A.N. Vujjanaradhya ... Member [J]

Shri T.V. Ramanan ... Member [A]

B. Krishnarao,
Tax-Assistant,
Office of the Additional
Collector of Customs,
Mangalore-10.

... Applicant

[By Advocate Shri H.S. Ananthapadmanabha]

v.

1. Collector of Customs,
Queen's Road,
P.B. No.5400,
Bangalore-560 001.
2. The Deputy Collector [P&V],
Customs & Central Excise,
Queen's Road,
P.B.No.5400,
Bangalore-560 001.
3. Assistant Director,
Staff Selection Comn.,
21st Floor,
Visweswaraiah Tower,
Dr. Ambedkar Road,
Bangalore-560 001.
4. Additional Collector Customs,
New Custom House,
Panambur,
Mangalore-10.

... Respondents

[By Advocate Shri M.S. Padmarajaiah...Senior Central Government
Standing Counsel]

O R D E R




Shri A.N. Vujjanaradhya, Member [J]:

1. Aggrieved by the alleged inaction of the respondents ['R' for short] ie. R-1 failing to dispose of the representation of the applicant dated 27.4.1993 [Annexure A-8] the applicant has made this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- i. to set aside the directions of the 2nd Respondent communicated to the applicant vide 4th respondent's letter C No.II/3-/10/93 E.1 dated 23.2.1993 [Annexure A-5];
- ii. to direct the respondents to allow the applicant to report for duty in the new post forthwith;
- iii. to grant all consequential reliefs from the date of issue of Appointment order ie., 1.2.1993 [Annexure A-3];
- iv. to award the cost of this application.

Briefly stated the facts of the case are as below:

2. The applicant, a Central Government employee in Group C cadre working in the office of the Addl. Collector of Customs, Mangalore, under the administrative control of the Collector of Customs, Karnataka, Bangalore, was denied the appointment as Inspector of Central Excise ['Inspector' for short] for which he was duly selected by the Staff Selection Commission ['SSC' for short] and the representation made to the Collector of Customs was of no avail. For the post of Inspector advertised the applicant had applied through proper channel [Annexure A-1] in which he came out successful. The applicant had also obtained no objection certificate [Annexure A-2] from the proper officer. On his selection, on the basis of names sponsored by SSC, the applicant was appointed as Inspector by order dated 1.2.1993 as in Annexure A-3. The applicant made application as in Anne-



xure A-4 dated 5.2.1993 for his relief so as to enable him to report for duty as Inspector. But R-2 had communicated that the offer of appointment was kept in abeyance and the same was communicated by Annexure A-5 dated 23.2.1993. Subsequently, by Annexure A-6 it was disclosed that certain disciplinary proceeding was pending against the applicant and, therefore, his appointment as Inspector was kept in abeyance. The said disciplinary proceeding was concluded by order dated 4.3.1993 [Annexure A-7] imposing a penalty of stoppage of one increment for a period of one year. But even after conclusion of the said disciplinary proceeding the applicant was not relieved. Therefore, the applicant, suffering hardship, had made a representation to R-1 on 27.4.1993 as in Annexure A-8. But that representation was not disposed of and therefore the applicant has approached this Tribunal for the above reliefs taking up the contentions that there is no provision to withhold his appointment as Inspector, that the doctrine of natural justice was violated, that the fact of imposition of penalty cannot be a ground for denial of appointment and that order Annexure A-5 keeping the order of appointment in abeyance is mala fide and illegal particularly when the applicant was permitted to make the application for the post by issuing no objection certificate.

3. The respondents, while not disputing the facts, contend that as per Govt. of India Order No.22 under Rule 11 of CCS [CCA] Rules, 1965 [Rule 135 of P&T Manual Volume III], an official on whom the penalty of withholding of increment or reduction to a lower service/grade or post etc. has been imposed for a specified period, should not be transferred or posted to another service/grade or post on or after the date of order imposing



the penalty but before the date from which the order finally ceased to be operative if such an order or posting results in payment of basic pay higher than that admissible to him in the existing service, grade or post consequent on punishment order. Therefore, it is the contention of respondents that as clarified by the Department of P&T, the applicant would be relieved after the expiry of the period of penalty imposed.

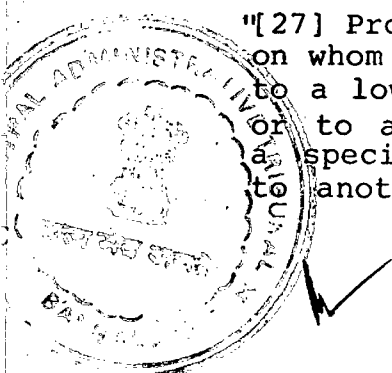
4. We have heard Shri H.S. Ananthapadmanabha, learned counsel for the applicant and Shri M.S. Padmarajaiah, learned Senior Standing Counsel for the respondents and have perused the records.

5. Though number of contentions are raised by the applicant, the main contention of the learned counsel for the applicant is that when no objection certificate was issued to the applicant to attend the interview before the SSC and when he was duly selected and appointed, there is no provision to withhold such appointment and that keeping in abeyance of such appointment is arbitrary, illegal and opposed to principles of natural justice and without any valid reason. On the other hand for the respondents it was urged that because the disciplinary proceeding initiated against the applicant was a minor penalty proceeding, no objection certificate was issued to enable the applicant to attend the interview and the same does not entitle the applicant to get the relief on appointment unless the period of penalty imposed is completed. For the alleged misconduct of the applicant as a Treasurer of Customs Recreation Club, Mangalore by order dated 4.3.1993 [Annexure A-7], the applicant was imposed a penalty of stoppage of one increment for one year without cumulative effect under Rule 12 read with Rule 11 of CCS[CCA]

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Rules. Earlier on 4.9.1991, the applicant had made an application directly for the post of Inspector as can be seen from Annexure A-1 dated 4.9.1991. It is not disputed that no objection certificate was issued to the applicant on 30.7.1992 as can be seen from Annexure A-2. Selection and appointment order is dated 1.2.1993 [Annexure A-3]. In the meanwhile the applicant was issued charge memo on 4.8.1992 and the same has culminated in imposition of penalty by order dated 4.3.1993 which is subsequent to the order of appointment of the applicant and others as Inspectors as found in Annexure A-3. When the applicant represented for his relief to join his new post, the department had sought clarification from the SSC and subsequently from the Department of Personnel & Training which clarification was made available to the respondents by the department after the application was filed. As per the said clarification by letter dated 4.1.1994 the applicant could be permitted to join the new post of Inspector only after the expiry of the period of penalty and his seniority would be counted from the date on which he joins the duty only after the period of penalty. In this connection Shri Padmarajaiah referred to the relevant para under Rule 11 of CCS[CCA] Rules which is found at para 27 in Swamy's Compilation of CCS [CCA] Rules 15th edition at page 48. This is with reference to Rule 135 of P&T Manual Volume III the principle of which is applicable to the facts of the present case also. This rule is required to be quoted for elucidating the contention of the respondents. It reads thus:


"[27] Promotion/transfer while under punishment.- An official on whom the penalty of withholding of increment or reduction to a lower service, grade or post, or to a lower time-scale or to a lower stage in a time-scale has been imposed for a specified period should not be transferred or posted to another service, grade or post, on or after the date



of order imposing the penalty but before the date from which the orders finally cease to be operative, if such a transfer, or posting results in payments of basic pay higher than that admissible to him in the existing service, grade or post consequent on the punishment orders."

This provision or the virus of this provision is not challenged in this application. The applicant who was appointed to the grade of Inspector, it cannot be disputed is a grade which results in payment of basic pay higher than that admissible to the applicant in the existing grade in which he is imposed penalty and, therefore, till the expiry of the said penalty, he is not entitled to be relieved so as to enable him to join the new post.

6. It is the contention of the learned counsel for the applicant that because no objection certificate was issued to enable the applicant to appear for interview for the post of Inspector, it is not open to the same authority to keep the order of appointment in abeyance and that there is no provision to keep the appointment in abeyance solely on the ground that disciplinary inquiry was pending. In this connection also it is necessary to refer to Para 26 and Rule 11 of CCS [CCA] Rules of the said volume of Swamy's compilation at page 47 which stated that "an officer admitted to the examination even though he may be under suspension or facing disciplinary proceeding, if he satisfies all other conditions for such examination, the promotion should not be ordinarily denied. But in exceptional cases, however, the promotion can only be after the departmental proceedings are over or if such person is completely exonerated". In the instant case the disciplinary proceeding was pending when the order of appointment of the applicant and others as Inspectors came to be issued. Within a short time thereafter



the proceeding has culminated in the imposition of penalty of stoppage of increment for one year. As per the rule quoted in the preceding para the applicant could not have been relieved to join the new post till the period of penalty was completed. Thus the action of R-2 is in accordance with rules and the clarification issued by the Department of Personnel & Training and the same cannot be faulted.

7. The learned counsel for the applicant sought support from three decisions to contend that the applicant who is duly selected and appointed could not have been refused to be relieved and the order of appointment could not have been kept in abeyance. But the facts of the three decisions on which the learned counsel has relied are different from the facts of the present case. In JOSEPH FERNANDES V. UNION OF INDIA AND OTHERS ATR 1992[1] CAT 447 the applicant was empanelled after examination and later on was de-empanelled arbitrarily without due notice and opportunity to represent against the proposed action. The de-empanelment was on the allegation of falsification and suppression of vital information but without notice which was not considered proper by the Tribunal and there was no disciplinary proceedings initiated against the applicant therein. Therefore, we are of the view that the ratio of this decision cannot be made applicable to the facts of the present case. In J.N.KAMAL V. UNION OF INDIA reported in 1992 [20] ATC 142 the question which arose for consideration was that junior to the applicant therein was promoted as Secretary denying the same promotion to the applicant. In that case also there was no question of any disciplinary proceeding against that applicant. Consequently the principle of the said decision also cannot be made applicable

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to the facts of the present case. In DR. SUNIL GOMBER V. UNION OF INDIA AND ANOTHER reported in 1992[20] ATC 667 the observation was that a candidate cannot be denied appointment merely on the ground that approval for dereservation of the vacancy was not forthcoming. Thus it is clear that the facts of this case also are different from the facts of the present case and the ratio of the said decision also cannot be applied to the facts of the present case.

7. To sum up, the mere issue of no objection certificate to enable the applicant to appear for interview for the post of Inspector will not entitle him to acquire a right to get relief on the order of appointment on selection to the post of Inspector when the disciplinary proceedings was pending against him which has culminated in imposition of penalty. The applicant can get himself relieved only after the expiry of the period of penalty imposed, as discussed earlier. Thus we see no merit in the application and the same will have to be dismissed. In the result the application fails and the same is hereby dismissed but with no order as to costs.



Sd-

MEMBER [A]

Sd- ^{DM}

MEMBER [J]

19/11/94

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SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

22/11/94