

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated: 20 OCT 1994

APPLICATION NO: 708 of 1993

APPLICANTS:- Sri. G. Puttaswamy,
V/S.

RESPONDENTS:- Secretary, M/o Finance New Delhi and (15) Others.

To

1. Sri. K. Ramadasan,
Advocate, No. 306,
Subedarchatram Road,
BANGALORE-560009.
2. Sri. M. S. Padmarajaiah
Senior Central Govt. Stg. Counsel,
High Court Bldg, BANGALORE-1.
3. The Collector of Central Excise,
Central Revenue Building,
Queen's Road, BANGALORE-560001.

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

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~~STAY ORDER / INTERIM ORDER~~ passed by this Tribunal in the above
mentioned application(s) on 19/10/1994

Issued on
20/10/1994

dk *Yogya*
O/c for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH

ORIGINAL APPLICATION NUMBER 708 OF 1993

WEDNESDAY, THIS THE 19TH DAY OF OCTOBER, 1994.

Mr. V. Ramakrishnan,

.. Member(A)

Mr. A.N. Vujjanaradhya,

.. Member(J)

C. Puttaswamy,
S/o Chinnaiah, Major,
Inspector of Customs and Central Excise
Air Cargo Complex, Bangalore-17. Applicant.

By Advocate Shri K. Ramadasan,

v.

1. Union of India
by Ministry of Finance
Department of Revenue,
Government of India, New Delhi-1,
represented by its Secretary.
2. Collector of Central Excise,
Central Revenue Building,
Queen's Road Bangalore-1.
3. Additional Collector ,P & V,
Office of the Collector of Central Excise,
Central Revenue Building,
Queen's Road, Bangalore-1.
4. Dy. Collector ,P & V,
Office of the Central Excise
Central Revenue Building,
Queen's Road, Bangalore-1.
5. Shri K. Sudhakara, Major,
Inspector of Central Excise,
Office of the Central Excise, Jayamahal
Range, Opp: Maruthi Nursing Home,
No. 7, Girls' School Road,
Sheshadripuram, Bangalore-20.
6. Shri Satyanarayana K.S.,
Major Inspector of Central Excise,
Office of the Asstt. Collector of
Central Excise, Central Revenue Building,
Devaraj Urs Lay-out, Davangere. Respondents
contd..



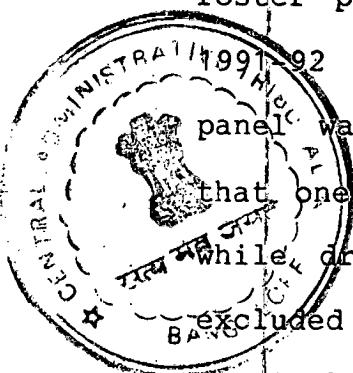
7. Shri M.B.Bhogesh Gowda,
Major, Inspector of Central Excise
Office of the Superintendent of
Central Excise, K.R.Puram Range,
No.7, Girls' Schools Road, Opp:
Maruthi Narsing Home, Seshadripuram,
Bangalore-20.
8. Shri P.A.Parmeswaran, Major,
Inspector of Central Excise,
Office of the Asst. Collector Customs,
No.41, Millers Road, Vasanthnagar,
Bangalore-52.
9. V.V. Doraiswamy, Major,
Inspector of Central Excise,
Office of the Additional Collector of Customs,
New Customs House, Panambur,
Mangalore.
10. Shri Rafiq Ahmed, Major,
Inspector of Central Excise, Office of
the Superintendent of Central Excise,
Basaveswara Chowka, Bidar.
11. Shri D.Ningana Gowda, Patil, N.S.,
Major, Inspector of Central Excise
Office of the Asstt. Collector of Central
Excise, Majawar Building, P.B.Road,
Belgaum.
12. Shri S.Sampath Kumar, Major,
Inspector of Central Excise, Office of the
Assistant Collector of Central Excise
Ganesh Complex, S.C.Road, Bangalore-9.
13. Shri S.V.Pandu Rao,
Major, Inspector of Central Excise,
Office of the Superintendent of
Central Excise, Hoskote Range, No.7,
Girls' School Road, Opp:
Maruthi Nursing Home,
Seshadripuram, Bangalore-20.
14. Shri R.Nagaraju,
Major, Inspector of Central Excise,
Office of the Superintendent of
Central Excise, Hunsur Range,
Hunsur, Mysore District.
15. Shri A.S.Koppad,
Major, Inspector of Central Excise,
Office of the Assistant Colector
of Central Excise, Central
Revenue Building, Navanagar, Hubli.
16. Shri J.Padmanabhagowd, Major,
Inspector of Central Excise,
Office of the Additional Collector
of Customs, New Custom House, Panambur,
Mangalore. .. Respondents.

(By Standing Counsel Shri M.S.Padmarajaiah for R1 to R4)

O R D E R

Mr.A.N.Vujjanaradhya, Member, J, :-

1. Aggrieved by his non-promotion to the grade of Inspector with effect from July 1991, the applicant has made this application seeking to convene a Review Departmental Promotion Committee ['RDPC' for short] and consider him for promotion with effect from that date.
2. The facts are not in dispute. A DPC for promotion to the grade of Inspector was held on 8th, 9th and 10th of July 1991 for 34 vacancies clubbing the vacancies of 1990-91 and 1991-92 against roster points 3 to 36 of II cycle. But the panel was reviewed by the RDPC which met on 29.7.1991 since the yearwise panel had to be drawn. In the RDPC the yearwise panels were drawn for 21 vacancies against roster points 3 to 23 for the year 1990-91 and 12 vacancies against roster points 24 to 35 in the II cycle for the year 1991-92 in all totalling upto 33 vacancies for which panel was drawn on 10.7.1991. The respondents urge that one unanticipated vacancy was taken into account while drawing the panel during July 1991 which was excluded in the RDPC since there was no provision to include the unanticipated vacancy. As per the Recruitment Rules ['RR' for short] for the post of Inspectors 75% of the posts are to be filled by direct recruitment and 25% by promotion among Tax Assistants/- UDCs/Stenographers/Draftsman/Woman Searchers. For the year 1990-91, the vacancies worked out was 85,



25% of which work out to 21.25 and hence 21 posts were earmarked for promotion during that year. Similarly for 1991-92 the vacancies including unanticipated vacancies work out to 51, 25% of which will come to 12.75 vacancies and ignoring the fraction 12 vacancies were earmarked for promotion during the year. The applicant, it is pleaded by the respondents, who was within the zone of consideration was not selected on the basis of his performance in the interview.

3. It is the contention of the applicant that if the fraction 0.25 and 0.75 for the years 1990-91 and 1991-92 were considered it would have constituted one vacancy for promotion from the cadre of Tax Assistant and because 36th vacancy in that cycle was reserved for scheduled caste official, he being the senior-most at that time he would have been promoted and, therefore, he has sought a direction from this tribunal for convening the RDPC and consider him for the said vacancy.

4. We have heard Shri K. Ramadasan, learned counsel for the applicant and Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel for the respondents and also perused the RR and proceedings of DPC and RDPC made available by the respondents.

5. As we have stated earlier the facts are not at all in dispute. In the DPC held on 8th, 9th and 10th July 1991, 34 vacancies were taken into consideration and those vacancies related to roster points 3 to 36 in II cycle. Because the vacancies of the 2 years ie., 1990-91 and 1991-92 were clubbed, in

the RDPC these vacancies for respective years were taken into consideration and while so determining the number of vacancies, the vacancies considered for the year 1990-91 were 21 and 12 vacancies for the year 1991-92. Thus only 33 vacancies were taken into consideration and not 34. The RRs simply mention 75% by Direct Recruitment ['DR' for short] and 25% by promotion. Nothing has been stated therein as to what should happen in case of fractional vacancies. The total number of posts for the 2 years were $85+51=136$ vacancies and 25% of which work out to 34 which were meant for promotion. Because of bifurcation of the vacancies for the two respective recruitment years, there were 85 vacancies during 1990-91 and 51 vacancies for the year 1991-92. In the ratio of 1:3 for promotion and DR, the fractional vacancy has occurred. For our query, the learned Standing Counsel submitted that during the year 1990-91, 64 vacancies were taken into consideration for DR and 39 for the subsequent year. In other words, in case of 63.75 posts for the year 1990-91 out of 85 vacancies, the DR posts were taken as 64 and not as 63. Similar exercise was not made when 25% of 51 vacancies for the year 1991-92 came to 12.75 vacancies. In that case the fraction of 0.75 was ignored without any rationale or valid reason therefor whereas the DR quota which was 38.25 was taken to be 39. The common sense view would be to round off anything beyond 0.5 as 1 vacancy and to ignore anything less than 0.5.



vacancy. Had the number of vacancies viz. 12.75 for the year 1991-92 been rounded off to 13 vacancies for promotion representing 25% of the total number of vacancies, the applicant would have got through inasmuch as 36th roster point was meant for SC candidate and the applicant was the next seniormost person.

6. We have also perused the proceedings of the DPC held on 8th to 10th July 1991 as also the RDPC held on 29.7.91. In the DPC the applicant was in the zone of consideration but because he secured less marks than some others in the zone of consideration he could not be selected. This cannot be faulted. For the year 1990-91 in the RDPC when 21 vacancies were considered there were 3 vacancies meant for SC at roster points 8, 14 and 22. Because the applicant did not rank for those vacancies he was not selected.

But when 12 vacancies for roster points 24 to 35 in II cycle were considered the applicant would have been eligible for promotion because he was the seniormost person and 36th roster point was meant for SC candidate. Because the RDP took into consideration only 12 vacancies for roster points 24 to 35 of II cycle the same has resulted in injustice being caused to the applicant. Had 13th vacancy been considered, there would have been 2 posts meant for SCs ie., 28th and 36th and the applicant being the next seniormost SC candidate after A.S.Koppad he would have been through.

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7. When these facts were brought to the notice of the learned Standing Counsel he would give no reason to justify the department's stand in ignoring the fraction beyond 0.5 in respect of promotion quota while taking 0.25 as one in respect of DR quota. Had that vacancy for the year 1991-92 been counted for promotion there would have been 13 vacancies and 13th vacancy which came to 36th roster point meant for SC, the applicant would have been eligible for promotion. The applicant was promoted to the cadre of Inspector in October 1991 but in the meanwhile some of his juniors have gone above which has adversely affected the applicant's seniority and, therefore, he has the grievance. Had RDPC held on 29-7-1991 considered one more vacancy for the year 1991-92 the applicant who was eligible for promotion would have been through. Therefore, it is just and proper that we should direct R-2 Collector of central Excise to hold a Review DPC and consider the applicant for the 36th vacancy taking into consideration the vacancies available for the promotion for the year 1991-92 as 13 and when found fit grant him the promotion with effect from the relevant date with all consequential benefits. Accordingly, the application is disposed of with no order as to costs.

Ar. This exercise shall be done within four months from the date of receipt of copy of order.

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W. J. S.
20/7/94
Section Officer

Central Administrative Tribunal
Bangalore Bench
Bangalore

Sd/-

MEMBER [J]

Sd/-

MEMBER [A]