

~~Draft~~

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1297 /1995.

Date of Decision: 26.4.97

Shri Latikant Shetye & 5 Ors.

Petitioner/s

Shri M.S.Ramamurthy

Advocate for the
Petitioner/s

V/s.

Union of India & 3 Ors.

Respondent/s

Shri Ravenkar

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri P.P.Srivastava, Member (A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

abp.


(B.S. HEGDE)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOTT RD., 4TH FLR.

MUMBAI - 400 001:

ORIGINAL APPLICATION NO.1297/95.

DATED THE 28th DAY OF APRIL, 1997.

CORAM: Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri P.P. Srivastava, Member (A).

1. Shri Latikant Shetye,
Tax Assistant,
Preventive Department,
Major Bunder-Vasco-da-Gama.
2. J.B.G.Fernandes,
Tax Assistant,
Preventive Department,
Major Bunder - Vasco-da-Gama.
3. Vassudev Anant Naik,
Tax Assistant,
Preventive Department,
Major Bunder - Vasco-da-Gama.
4. Xec Casam Ali,
Tax Assistant,
Preventive Department,
Major Bunder - Vasco-da-Gama.
5. Smt. Shakuntala Kalangutkar,
Tax Assistant,
Preventive Department,
Major Bunder - Vasco-da-Gama.
6. Smt. Rukmini D. Pawarkar,
Tax Assistant,
Preventive Department,
Major Bunder - Vasco-da-Gama.

... Applicants.

v/s.

1. Union of India,
through Commissioner of
Customs and Central Excise
with its Office at Panaji.
2. Commissioner of Customs and
Central Excise at Panaji.
3. Ratima Noronha, M.No.1438,
Aldona, Panarim,
Bardez Goa.
4. M. B. Sawant, H.No.149,
Suruchem Bhat, Kumbhar Juva.

By Advocate Shri Ravenkar

... Respondents.

I O R D E R I

I Per Shri B. S. Hegde, Member (J) I

In this OA, applicants are challenging the non-regularisation as Preventive Officers in the Customs Department and have also challenged the Impugned Order dated 13/9/95 reverting the applicants to the post of Tax Assistant w.e.f. 14/9/95 as malafides, though they were holding the post of Preventive Officers on adhoc basis with artificial breaks since 1990-91 onwards.

2. Counsel for applicants, Shri M.S.Ramamurthy, vehemently urged that the Impugned Order passed by respondents vitiated by malafides, in as much as at the relevant time of their reversion, vacancies of regular preventive Officers of Customs were available which could have accommodated the applicants. The applicants also challenged the arbitrary action on the part of respondents to promote respondent No.3 and 4 inspite of not being eligible in accordance with the instructions, therefore, there is a discrimination in treating the applicants viz-a-viz respondent No.3 and 4.

3. The contention of the Learned Counsel for applicants is that their feeder cadre is Tax Assistants and the other two feeder cadre is UDC and Stenographer. They are also eligible to be considered as Central Excise Inspectors. In this connection he draws out attention to the various orders passed by respondents in promoting the applicants on 'adhoc basis' since 11/7/90 till their reversion on 13/9/95. Ministry of Finance vide its order dated 28/8/95 directed the department to convene a regular DPC for selection of candidates for the post of 'Preventive Officers' and 'Central Excise Inspectors'. The undisputed facts are that the Ministry of Finance agreed to fill 6 posts of Preventive Officers and 6 posts of Inspector of Central Excise from the existing vacancies of "Direct Recruits" by way of promotion from feeder cadre Officers and posts are to be filled in by a selection DPC according to recruitment rules. A regular

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DPC for promotion of Tax Assistants to the posts of Preventive Officers and Inspector of Central Excise was held on 6/9/95 and select list was drawn on the basis of the findings of the DPC.

4. The Learned Counsel for Applicants urged that no fresh DPC should have been held in 1995 for regularising the services of the applicants, because when the applicants were appointed in the year 1990-91 they were considered by DPC on the basis of willingness called from the eligible employees and they were subjected to physical tests as required under the rules. Besides, all the applicants had qualified in the written examination and thus have been appointed in the year 1990-91 as Preventive Officers on adhoc basis. That their appointment is treated as adhoc because they were appointed against the posts in the direct recruitment quota with certain artificial breaks, etc. It is also stated in the appointment letters that they would be reverted within one year when the Staff Selection Committee sponsored candidates became available. Further, it is orally urged, because the revised guidelines from the Ministry dated 24/3/92 wherein they adopted 'Mark System' instead of 'Grading' system as envisaged in DOP & T circular dated 10/4/89. Therefore, the revised guidelines of Ministry is contrary to DOP & T's circular referred to above and no option was called for from any of the employees. This was necessary, because of general instructions on page-57 of the OA and option is required to be called for, because of recruitment rules for Preventive Officers and Central Excise Inspectors are different. The 1995 DPC considered both the Preventive Officers as well as Central Excise Inspectors on the same occasion and by the same Committee of the eligible candidates. Therefore the adjudication by the DPC 1995 is therefore arbitrary and illegal. Such a contention of the applicants is noticed, but only to be rejected because the applicants have not challenged the virus of the revised guidelines issued by Ministry of Finance dated 23/4/92 which they say is contrary to DOP & T circular dated 10/4/89.



5. In this OA, the applicants have not challenged the proceedings of the DPC either on the ground of arbitrariness or on malafide grounds. However, orally submitted that the revised instructions or guidelines of the Ministry dated 24/3/92 is contrary to DOP & T circular dated 10/4/89. However, that is not under challenge therefore it is not necessary for us to comment on that question. The admitted facts are that the applicants were not senior enough for promotion quota in 1991-92 and were treated as unfit for promotion despite they being allowed to continue on adhoc basis as against direct recruit vacancies. In 1995, none have been called for option. The contention of the applicant is in the year 1995, 6 posts of Direct Recruit vacancies were released for the purpose of promotion quota, since the applicants have been working for the last 5 years, they ought to have been regularised in the said posts.

6. The circular dated 30/10/91 states regular DPC for the post of 'Regular Promotee Vacancy' of Preventive Officers. Accordingly, regular DPC was held on 28/8/91 and 5 candidates were selected for the post of Preventive Officer and applicants 1, 2, 3 and 4 appeared for the said DPC but were not selected as they were found unfit. Pursuant to the aforesaid circular, willingness of the eligible officers were called and accordingly, applicants as well as respondent No. 3 and 4 have conveyed their willingness and thereafter DPC was held on 15/1/92 and again the applicants were considered and not selected as they were found unfit and respondent No. 3 and 4 who were eligible were not included as they were coming within the zone of consideration of 5 general promotee vacancies. Further, the applicants obtained less than 10 marks in oral interview and therefore could not be considered in 1992 DPC. That the applicant had failed in the interview and therefore could not get the benefit of the marks irrespective of their CCR's. Needless to reiterate during the year 1991, in view of the exigency of service, the applicants

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were appointed afresh as Preventive Officers on adhoc basis for a specific period of less than one year, but without holding DPC for such adhoc promotions. Again in 1992, the applicants were reverted. Applicants are again appointed as Preventive officers on adhoc basis for a specific period of less than one year for exigency of work to supplement the manpower in the preventive services against direct recruit vacancies.

7. As against this, the Learned Counsel for Respondents, Shri Ravenkar submitted that circular dated 8/7/91 vide page-57 of OA mentions that the appointment was only for 'adhoc purpose' and not for regular appointment. Further, it is made clear vide circular dated 11/7/90, the appointments of the applicants were purely on adhoc basis and the promotion is on basis of their seniority as Tax Assistants and is for a period of less than one year due to urgency and exigency of work in view of large number of posts of Preventive Officers lying vacant., and they should be found fit by the DPC for the purpose of regularisation.

8. It is denied by the respondents that the applicants were holding the post of Preventive Officers continuously for a period of 5 years. The posts of Preventive Officers are filled in by promotion and direct recruitment with a ratio of 1:3. The Staff Selection Commission did not sponsor candidates to fill in the post of Preventive Officers/ Inspector of Central Excise and accordingly a large number of vacancies remained vacant for a long time. Therefore, the respondents have appointed the persons who are eligible to be promoted from the feeder cadre are being appointed against Direct Recruit Quota on adhoc basis as stopgap arrangements due to exigency of work.

9. It is not the case of the applicants that they have not been considered in all DPCs for promotion., but they were not found fit. Further the applicants were considered both for the post of Preventive Officers as well as Central Excise

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that being the position, no option is called for from the applicants which is not required to be done in view of circular No. 40/91 wherein it is made clear that those incumbents who were officiating on adhoc basis will be considered only if they revert to their original post and option is required because the applicants will loose their continuity in service/seniority. Therefore, the stand taken by the department to revert the applicants to the post of Tax Assistant is purportedly legal and in accordance with the recommendations of the DPC. The DPC has considered 5 years ACRs preceding the year in which they were holding have been considered by DPC. The applicants have not challenged the recruitment rules, nor the DPC proceedings, therefore, the applicants have no loco-standi to challenge the reversion order passed by the respondents which is in accordance with relevant rules because admitted facts are that they have been working on adhoc basis for a period of 4 to 5 years.

10. It is further submitted that the applicants were again considered by selection DPC held on 16/8/96 and they were not selected for the post of Preventive Officers. DPC also considered the applicants for the post of Inspectors of Central Excise and accordingly, applicants 3, 4 and 5 were selected and offered appointment to the post of Inspector of Central Excise. They have accepted the offer of appointment subject to outcome of this OA and have joined duty. Applicants 1, 2 and 6 were also considered but they could not come within the select panel.

11. During the course of hearing we had directed the respondents to furnish the DPC proceedings of 1989 and 1995. Pursuant to the direction of the Tribunal, they have submitted the respective DPC records for our perusal. Having gone through the DPC records, we notice that the DPC considered the eligible applicants both for the post of Preventive Officers and Inspector of Central Excise and had drawn the panel of select list on the basis of assessment mark by DPC.

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12. In 1995 DPC, so far as Preventive Officers is concerned, 6 direct recruitment vacancies were diverted to promotee quota vacancies and in addition to this there is one regular promotee quota vacancy due to promotion. There were seven regular vacancies out of which 4 - General, 2- SC and 1-ST. The DPC has considered 16 eligible candidates and one SC candidate. There is no eligible ST candidate available. The normal age limit for promotion to the grade of Preventive Officers is 38 years and upto 45 years in the case of persons covered by Ministry's letter dated 6/10/75. The Committee went through the CRs of all eligible candidates for the last 5 years, assessed their CCRs and drew up a panel list of 16 candidates., in which applicants grading is below 5. Thereby they could not be selected. Similar is the case of Inspector of Central Excise. Six direct recruit vacancies were ^{re}leased and diverted to promotee quota vacancies vide Ministry's letter dated 28/8/95. In addition to this two regular promotee quota vacancy exists due to resignation and Inter Collectorate transfers. Out of these vacancies, four candidates who were approved in the D.P.C. held on 5/9/94 have been regularised. Remaining four vacancies, one general, 2 SC and 1 ST. DPC for the post of Preventive Officers and Central Excise Inspector was simultaneously held for the 7 posts of Preventive Officers and 4 posts of Inspector of Central Excise. Accordingly, 18 eligible general candidates and one SC candidate were considered for the post of Preventive Officers and Central Excise Inspector. In both the list, same eligible candidates have been inserted in the panel and same grading was given.

13. The respondents in their affidavit stated that four candidates who were selected by a regular 1989 selection DPC for the post of Inspector of Central Excise, and appointed on adhoc basis. They were officiating on adhoc basis continuously without termination/reversion on direct recruit vacancies while awaiting promotee vacancies. Therefore, their services were regularised vide letter dated 28/8/95 and their appointments

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/regularisation is not similar and identical and cannot be compared with the present applicants because the present applicants were appointed only for a specific period and for specific purpose and their appointment is clearly for less than one year on adhoc basis and reverted after the expiry of the period, but it is not so in the case of Central Excise Inspectors working on adhoc basis pursuant to 1989 DPC selection.

14. The Learned Counsel for respondents in support of his contention that the applicants do not have any right to seek for regularisation on the basis of their adhoc services rendered to the department, he relies on the Supreme Court decision in State of Orissa v/s. Dr.Pyari Mohan Misra reported at AIR 1995 SC 974 wherein the Apex Court has held:-

"As there is no order communicated to the respondent appointing him in a substantive capacity as Director. The only order passed in his favour was of July,22, 1972. That order clearly shows that he would continue temporarily until further orders in terms of the order of appointment made on ad hoc basis on August 12,1971. Therefore, mere prolonged continuous ad hoc service does not ripen into a regular service to claim permanent or substantive status. He would remain to be on ad hoc basis until further orders., and the reversion order is perfectly legal and valid."

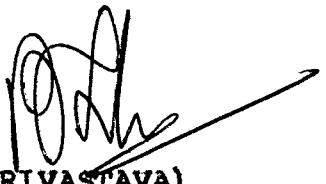
Therefore, he submits that this ratio squarely apply to the present case as the facts are similar and thereby the application is required to be dismissed.

15. We have heard both the sides at great length and perused the pleadings and elaborate arguments. The Learned Counsel for Applicants, apart from the oral arguments made at Goa submitted a written submission of his arguments. We have perused the same and found no new materials have been brought to our notice in the submissions made by the Learned Counsel for Applicants.



16. Therefore, the short question to be considered is whether the applicants by holding the posts of Preventive Officers on adhoc basis can claim seniority and regularisation by virtue of working on adhoc basis. Respondent No.3 and 4 have been though/working on adhoc basis as Inspector of Central Excise, were eligible to be considered for the post of Preventive Officers. Therefore, there is no illegality in their appointment as Preventive Officers and the same was done on the basis of the assessment of the DPC ~~of~~ all their CRs. In the result, we do not find any merit in the case and the same is dismissed with no orders as to costs.

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(P.P. SRIVASTAVA)
MEMBER (A)


(B.S. HEGDE)
MEMBER (J)

abp.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Review Petition No. 95/97 in
Original Application No. 1297/95.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)
Hon'ble Shri P.P. Srivastava, Member (A)

Latikant Shetye and Ors. ... Applicants.

V/s.

Union of India and others. ... Respondents.

Tribunal's order on Review Petition by Circulation.

¶ Per Shri B.S. Hegde, Member (J) ¶ Dated: 28.11.97

The applicant has filed this Review Petition seeking review of the judgement dated 28.4.97 which has been received by the applicant on 9.5.97. The Review Petition has been filed on 18.3.97, admittedly a belated one. As per Rules 17 of the CAT Procedure Rules 1987, the Review Petition is required to be filed within 30 days from the date of receipt of the order sought to be reviewed.

2. The matter heard at Panaji, Goa. Having heard rival contention of the parties, the Tribunal came to the conclusion that there is no illegality in their appointment as Preventive Officers and the same was done on the basis of the assessment of the DPC of all their CRs. Accordingly the O.A. was dismissed. Shri M.S. Ramamurthy appeared on behalf of the applicant and Shri Ravenkar appeared on behalf of the respondents. Whereas the Review Petition has been signed by Shri S.Natarajan.

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and not by Shri Ramamurthy. Even in the condonation of delay petition filed by the applicant, no ~~possible~~ ^{Sub. (2)(b)} reasons was given for condoning the delay in filing the Review Petition except stating that it took some time for getting legal opinion from Bombay Advocate and the petitioners were under the impression that the Review Petition was to be filed within three months. The applicant was well aware of the judgement. Besides that, the applicant has not made out any point for re-consideration either on the point of error on the face of the record nor any new facts have been brought to our notice for calling review of the judgement. The Review Application cannot be utilised for rearguing the case on the same ground. The Apex Court in the case of Chandra Kanta and Another V/s. Sk. Habib AIR 1975 Vol. 62 SC 1500 wherein it was held that " Once an order has been passed by this Court, a review thereof must be subject to the rules of the same and cannot be lightly entertained. A review of the judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and over-rules arguments, a second trip over ineffectually covered ground or minor mistake of inconsequential import are obviously insufficient."

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3. In the light of the above, we find that neither any error apparent on the face of the record has been pointed out nor any new facts have been brought to our notice calling for a review of the judgement. The ground raised in the Review Petition are more germane for an appeal against our judgement and not for review. The Review Petition is, therefore, dismissed, both on the grounds of limitation as well as on merits.

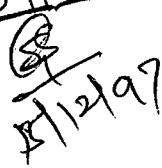

(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)

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Order/Judgement despatched
on 8/12/97
to Applicant/Respondent (s)
on 8/12/97


8/12/97