

(42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : AT HYDERABAD.  
\* \* \*

O.A. 1289/93

Dt. of Decision : 26.4.1994.

Smt. P. Usharani

.. Applicant

Vs

1. The Collector,  
Customes & Central Excise,  
Visakhapatnam.

2. The Asst. Collector of Customes (P&V)  
Customes Home,  
Visakhapatnam.

.. Respondents.

COUNSEL FOR THE APPLICANT : Mr. P.B. VIJAYAKUMAR

COUNSEL FOR THE RESPONDENTS : Mr. N.V. RAMANA, Addl. CGSC

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

JUDGEMENT

[AS PER HON'BLE JUSTICE V. NEELADRI RAO,  
VICE-CHAIRMAN]

----

Heard Shri P.B. Vijayakumar, learned counsel for the applicant and also Shri N.V. Ramana, learned standing counsel for the Respondents.

2. This OA was filed praying for a direction to the Respondents to appoint the applicant in the vacancy of the Examiner which is likely to arise on 1-5-94.

3. The facts which give rise to this OA are as under:

The applicant was promoted on ad hoc basis to the post of Preventive Officer the post of UDC. The post of the Examiner and Preventive Officer are in the same cadre and they have to be filled up by promotion from amongst the UDCs with 5 years of service, and direct recruitment in the ratio 1:2.

4. The particulars as referred to in Para 9 of the reply affidavit indicate that the vacancy which is going to arise on 1-5-94 due to the retirement of Smt. Varahalu will be at point 8 and hence it should go to the direct recruits. According to the Respondents, Smt. Varahalu is working as Examiner and hence the vacancy which will arise on 1-5-94 is in the post of Examiner. But it is contended for the applicant as under:

\*When the 4th vacancy for the promotees had arisen on 6-12-91, and when it should have been filled up by a S.C candidate and

44

.. 3 ..

even though Shri P.Appanna, a S.C. candidate completed 5 years of service as UDC by 1-1-1991, his case was not considered for promotion then and an O.C. candidate Shri S.V.Subba Rao was promoted then and the latter joined on 6-12-1991, and if Shri P.Appanna was promoted on 6-12-1991, the present vacancy should have been at point No. 7 and as Shri S.V.Subba Rao retired on 30th April, 1993, the applicant being the senior most promotee should be considered for the present vacancy and hence this vacancy should be treated as at point No. 7 which is for promotees.

5. It is conceded for the Respondents that though Shri P.Appanna, a S.C. candidate was eligible for promotion when the vacancy arose on 1-5-1991 at point No. 4, his case was not considered. When SC candidate was available, then the question of dereservation had not arisen. Thus it is a case where due to inadvertence Shri S.V.Subba Rao, OC was considered instead of Shri P.Appanna when the vacancy had arisen at point No. 4 which is for promotees. If Shri P.Appanna was promoted on 6-12-1991 itself, Shri S.V.Subba Rao would not have the chance of promotion as no vacancy would have arisen before 1-5-1994 and as the date of his retirement was 30.4.1993. Thus in view of the inadvertence on the part of the department in not considering the case of Shri P.Appanna for promotion in 1991, a vacancy had arisen on 1-5-1993 for which Sri P.Appanna was considered for ptomotion. If there was no such inadvertence no vacancy would have arisen on 1.5.93, as Sri P.Appanna if appointed at vacancy No.4, would have continued and the vacancy after filling vacancy at S.Nos 5 and 6 by direct recruits Sri J.M.Kishore and

(65)

.. 4 ..

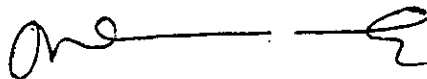
Shri Y.Srinivasa Rao, who on 5.2.92, would arise on 1-5-94 due to retirement of Smt.Varahalu and that vacancy will be at point No.7 which is for promotees. There is force in the contention for the applicant that she should not suffer for the mistake, though it was committed inadvertently on the part of the department. So, in view of the same, it has to be held that the vacancy which is going to arise on 1-5-94 should be treated as vacancy at point No. 7 and the same has to be filled up only by promotion, and not by direct recruitment, as the vacancies at points 8 & 9 have to be filled up by direct recruitment.

6. It is needless to say that when it is to be held that the present vacancy has arisen at point No.7 and Shri P.Appanna is deemed to have been considered at Sl.No. 4 that is 2nd point of the promotees, this vacancy at 7th point has to be held as a case of promotion of the 3rd promotee.

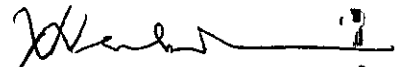
7. We also feel it proper to observe that on the basis of this order, Shri P.Appanna cannot claim seniority over Shri J.M.Kishore & Shri Y.Srinivasa Rao, the direct recruits for the mere reason that he has not protested when his case was not considered and the case of Shri Subba Rao was considered for the vacancy which had arisen in December, 1991.

8. In the result, the Respondents have to proceed to fill the vacancy of the Examiner that is going to arise on 1-5-94 due to the retirement of Smt. Varahalu by treating it as vacancy at S. No. 7 (~~vacancy which had arisen in October, 1991~~) and it has to be filled up as unreserved for the said vacancy is at the 3rd point in regard to the promotions. It is needless to say that the case of the applicant <sup>also</sup> for the said vacancy has ~~also~~ to be considered in accordance with rules.

10. The O is ordered accordingly. No costs.



(R. RANGARAJ N)  
Member (Admin)

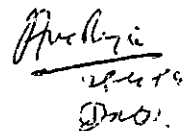


(V. NEELADRI RAO)  
Vice-Chairman

Dated the 26th April, 1994

Open court dictation

NS

  
P. R. Ravi  
D.O.

To

1. The Collector,  
Customs & Central Excise,  
Visakhapatnam.
2. The Asst. Collector of Customs (P&V),  
Customs House,  
Visakhapatnam.
3. Copy to Counsel for the Applicant  
Mr. P.B. Vijayakumar, CAT, Hyderabad.
4. Copy to Counsel for the Respondents  
Mr. N.V. Ramana, Addl. CGSC, CAT, Hyderabad.
5. One Spare copy.
6. 1-C.C. Librarian, CAT Hyd.

Stamp  
28/4/94

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO  
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY  
MEMBER (JUDL)

AND

THE HON'BLE MR. R. RANGARAJAN : M (ADMN)

Dated: 28/4 -1994

ORDER/JUDGMENT

M.A./R.A./C.A./No. —

in

O.A.No. 1289/93

T.A.No. (w.p.)

Admitted and Interim Directions  
Issued.

Allowed

Disposed of with directions

Dismissed.

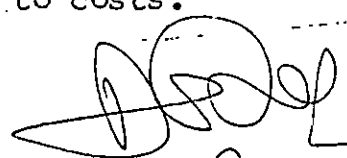
Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.

Central Administrative Tribunal  
DESPATCH  
29 APR 1994  
HYDERABAD BENCH.

  
29/4/94