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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.324/94

DATE OF ORDER : 02-07-1997.

Between :-

1. K.Bhavani Shankar
2. B.Krishna Murthy Raju
3. N.Someswara Rao
4. K.Siva Rama Krishna

.. Applicannts

And

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|---|-----------------------|
| 1. Union of India, rep. by its
Secretary, M/o Finance,
New Delhi. | 10.S.Raghuram |
| 2. Central Board of Excise & Custom, rep. by its Chairman, New Delhi. | 11.Jogendra Singhmore |
| 3. Collector, Customs & Central
Excise, Visakhapatnam. | 12.Aravinda Das |
| 4. Additional Collector, Customs,
Visakhapatnam. | 13.S.Vijaya Pal |
| 5. Asst.Collector, Customs (Estt.), Visakhapatnam. | 14.Rajesh Jacob |
| | 15.M.K.Srivasthava |
| | 16.A.Sunil Kumar |
| | 17.P.T.Rao |
| 6. Smt.Vinay Singh | ... Respondents |
| 7. Sanjay Kumar Sarma | |
| 8. R.Balaji | |
| 9. N.Raveendri Kumar | |

... Respondents

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Counsel for the Applicants : Shri P.B.Vijaya Kumar

Counsel for the Respondents : Shri N.V.Ramana, CGSC

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CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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2/1/97

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(Order per Hon'ble Shri B.S.Jai Parameshwar, Member (J)).

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Heard Sri PB Vijay Kumar, counsel for the applicants and Sri V.Rajeshwar Rao for Shri NV Ramana, learned standing counsel for respondents. There are 12 private respondents in the OA. Out of them Respondents 6, 7, 10.11 and 14 are served. They have remained absent. Notices to other private respondents have been issued but the acknowledgements have not been received back.

2. The Applicants were working as UDCs in the Department of Customs. They were promoted to the posts of Preventive Officer on 15-3-84, 14-3-86, 22-5-87 and 2-12-88 basis. Subsequently, their services as Preventive officers were regularised with effect from 6-12-91, 10-3-93, 25-11-93 respectively. Their grievance is that their services should have been regularised in the grade of Preventive Officer from the date of their initial appointment to the said post. Hence they have filed this OA for a direction to the respondents 1 to 5 to regularise the promotion with effect from the date of their initial promotion to the grade of Preventive Officer on adhoc basis with all consequential benefits.

3. A counter has been filed admitting the promotions of the applicants on adhoc basis and their regularisation on subsequent dates but contending that during 1991 due to sanction of additional posts in the cadre of Preventive Officer regular vacancies were created in promotion quota. Against those vacancies, the Officers who were officiating on adhoc basis were

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regularised with effect from 6-12-91. Similarly the applicants were regularised on the dates mentioned in the OA. At the time of giving adhoc promotions, the applicants were made clear that they should not claim any seniority in the grade and hence the applicants cannot claim regularisation from the date of initial appointment and that the OA be dismissed.

4. During the course of arguments, the learned counsel for the applicants submitted that their promotions as Preventive Officers in the first instance though on adhoc basis was in accordance with the rules and that they were regularised at a later point of time and that ^{that} averment has not been categorically denied in the reply. Hence the learned counsel for the applicant submits that the promotion though on adhoc basis was made strictly in accordance with the rules and they were entitled to the regularisation in accordance with the recruitment rules.

5. The learned counsel for the respondents submits that the promotions were made on adhoc basis and that the seniority on that basis cannot be given.

6. We are unable to accept the contentions of the respondents to deny seniority to the applicants. If the promotions even on adhoc basis made to the post of Preventive Officer strictly following the rules then the claims of the applicants are genuine. In this connection we would like to bring to the notice of the respondents the observations of the Hon'ble Supreme Court in the case of *{Direct Recruitment Class II Engg. Officers' Assn. Vs. State of Maharashtra}* (reported in AIR 1990 SC 1607) at page-44, wherein it was held as follows :-

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For

"44. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the ~~initial~~ ~~post~~ following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

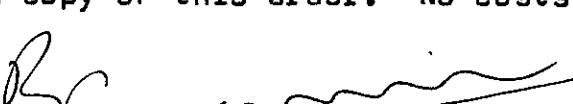
following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

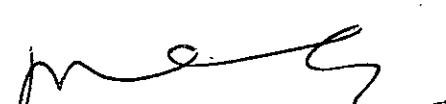
7. In view of the above ~~decision~~ ^{Hon'ble} ~~direction~~ of the Supreme Court, we have left with no other alternative except to declare that the applicants are entitled for the seniority if they are promoted ~~even~~ in accordance with the rules against the quota earmarked for promotee Officers. These facts have to be checked by the respondents from the records.

8. In view of what is stated above, the OA is disposed of as below :-

If the applicants are promoted against the quota earmarked for the promotee officers' to the post of Preventive Officer initially even if that ~~post~~ ^{was on} ~~is adhoc~~ basis, they are entitled for the seniority from the date of initial appointment provided the recruitment rules are fully adhered to.

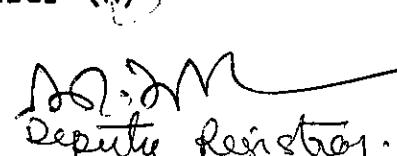
9. Time for compliance is 4 months from the date of receipt of a copy of this order. No costs.


(B.S.JAI PARAMESHWAR)
Member (J)


(R.RANGARAJAN)
Member (A)

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21/7/97
Dated: 2nd July, 1997.
Dictated in Open Court.


Deputy Registrar.

O.A.324/94

TO

1. The Secretary, Ministry of Finance,
Union of India, New Delhi.
2. The Chairman, Central Board of Excise
and Custom, New Delhi.
3. The Collector, Customs & Central
Excise, Visakhapatnam.
4. The Additional _____
Visakhapatnam.
5. The Assistant Collector, Customs (Estt.)
Visakhapatnam.
6. One copy to Mr. P.B.Vijaykumar, Advocate, CAT.Hyd.
7. One copy to Mr.N.V.Ramana, Addl.CGSC. CAT.Hyd.
8. One copy to D.R.(A) CAT.Hyd.
9. One spare copy.

pvm.

case
16/2/97

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I COURT

IN

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

THE HON'BLE MR. JUSTICE P. Rangarajan, M.J.
VISALAKSHMI

and
THE HON'BLE MR. B. S. T. Parameswari.
CH. CHOCKA RAO, M.J.

Dated: 27 - 7 - 1997

ORDER/JUDGMENT

M.A./R.A./C.A. No.

C.A. No.

324/94.

T.A. No.

(w.p.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

Received on
Case to be decided
By
8/7/97
5.45 P.M.

