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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1074/94

Date of Order: 22.7.97

BETWEEN:

R.Nageswara Reddy

.. Applicant

AND

Hyderabad.

2. The Assistant Collector of Central  
Excise, Kurnool Division.

.. Respondents.

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Counsel for the Applicant

.. Mr.K.Lakshminarasimha

Counsel for the Respondents

.. Mr.N.R.Devraj

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CORAM:

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

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

- - -

J U D G E M E N T

(( Oral order as per Hon'ble Shri B.S.Jai Parameshwar, M(J) X

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Heard Mr.K.Lakshmi Narasimha, learned counsel for the applicant and Mr.N.R.Devraj, learned standing counsel for the respondents.

2. The applicant herein was initially appointed as U.D.C. during the year 1987 by way of direct recruitment. It is stated that he was appointed as U.D.C. against physically handicapped quota. He was promoted as Tax Assistant from 11.9.1990. On 23.9.1991 he was promoted as Inspector of Central Excise on adhoc basis. While regularising<sup>in</sup> the post of Inspector of Central Excise ~~due~~<sup>the</sup> adhoc promotees, the respondents by the impugned order dt. 30.8.94 reverted the applicant to the post of Tax Assistant.

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3. The applicant has filed this OA to quash the order bearing No. (NGO) No.152/94, dt. 30.8.94 issued by R-1 and declare that he is entitled to be continued as Inspector of Central Excise and to direct the respondents to regularise his services as Inspector of Central Excise and for consequential benefits.

4. The respondents have filed their counter stating that the post of Inspector of Central Excise is an executive post that no reservation against the PH quota is available in that cadre <sup>and</sup> that the applicant was erroneously promoted on adhoc basis to the post of Inspector of Central Excise. While regularising the adhoc promotees he was not considered in the DPC held on 15.4.94 keeping in view the Board's letter No.B-12017/5/91-Ad. III B dt. 13.7.93, wherein the physically handicapped persons against the executive post have not been identified as suitable for appointment. The applicant being an adhoc promotee has no claim for that post that he was promoted on adhoc basis as Inspector of Central Excise without seeking approval from the CBEC that his erroneous promotion to the said post on adhoc basis which is a Group-C post cannot be allowed for his defective vision.

5. It is strange to note that the respondents fail<sup>ed</sup> to note the applicant's physical deformity while promoting him as adhoc Inspector of Central Excise. When such an adhoc promotion is made, a long note is being put up by the concerned explaining the details of the employee who was considered for promotion. If his disability is not noted it is not the fault of the applicant. ~~It is~~ The fault squarely lies on the administration section of the respondents who initiated the note for making ~~prom~~ appointment on adhoc basis as Inspector. The administration

59

section knows very well that when a physically disabled person is to be promoted as Inspector proper approval from CBEC has to be obtained. If such an approval is not obtained then the official responsible for approving to the note should be held fully responsible for the mistake. Further the DPC which is headed by a senior official of the department cannot be ignorant of the rule. When a physically disabled person is to be considered then the member of the DPC should have referred the case back to the department before selecting him for adhoc promotion. That too does not appear to have been done in the present case. Thus the applicant has been found fit by everybody for promotion to the post of Inspector irrespective of the fact that he was appointed <sup>as UDC.</sup> against the quota of physically handicapped ~~as UDC.~~

6. Further, the respondents allowed the applicant to discharge the duties of Inspector till he was reverted by the impugned order. Because of the stay given by this Tribunal he is even now continuing as Inspector of Central Excise.

7. As submitted by the learned counsel for the respondents no P.H. post is reserved in the Inspector of Central Excise cadre. Because of the serious lapse committed by the department in allowing the applicant <sup>to</sup> continue as Inspector and it is also seen that the applicant discharged the duties of Inspector during the <sup>Said</sup> period. Though the learned counsel for the respondent submit that he was asked to work inside the office as Inspector the applicant submits that he did field work also. Whether he did the field work or he was allowed to do the work inside the office is <sup>material</sup> not a ~~point~~ point for consideration in the OA. The very fact he was allowed to work as Inspector throwing the necessary rules <sup>to air</sup> to air, the applicant cannot be allowed <sup>to</sup> to suffer for the inefficent work of the department and officers of the department. Hence we are of the opinion that the applicant

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should not be allowed to suffer for the lapses on the part of the department. In that view, we feel that the applicant should be allowed to continue as an exception which shall not be quoted as a precedent in future. However we have to safeguard the department also in this connection. The one of the defects pointed out by the respondents is that the applicant while discharging the duties, may suffer physical disability due to the duties involved and if that happens he may blame the department. We take note of that in order to ensure for such disability the department is held not responsible <sup>and</sup> the applicant should give an undertaking that he will not in any way assail the department if he undergoes any physical disability due to his work in the executive post as an Inspector. That undertaking should be given forthwith by the applicant to the concerned respondent on receipt of this judgement. But this ability will not

*stand in the way of the respondents to take up with the applicant if he does not discharge his duties properly entrusted to him.*

8. If such an undertaking is received then the respondents should consider his case by a review DPC for considering his fitness for posting as a regular Inspector. That DPC shall consider all the other facts except the disability portion for regularly posting him as Inspector in the Central Excise department.

9. Till such time the DPC determines the suitability as above the interim order dt. 1.9.94 shall continue.

10. If the applicant is found fit by the review DPC as above then he should be interpolated in the seniority list of Inspector just above his immediate junior who was regularly promoted as the Inspector in the Central Excise department.

11. With the above directions the OA is disposed of. No cost

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

(R. RANGARAJAN )  
Member (Admn.)

Dated: 22nd July, 1997

( Dictated in Open Court )

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D.R. (J) 307-8

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TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD

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

AND

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

DATED: 22/7/97

ORDER/JUDGEMENT

M.A./R.A/C.A.NO.

in

O.A.NO. 1074/94

Admitted and Interim directions  
Issued.

Allowed

Disposed of with directions,

Dismissed

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

YLKR

II Court.

