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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : AT HYDERABAD.

O.A. No.268 of 1996.

Date of Order :- 16-7-1998.

Between :

P. Koteswara Rao, s/o
Late P. Venkateswara Rao,
aged about 43 years,
Ad hoc P.O. Custom House,
Visakhapatnam.

...

Applicant

And

1. The Commissioner of Customs
(reptg. Union of India),
Custom House,
Visakhapatnam- 530 035.
2. The Addl. Commissioner of Customs,
Custom House, Visakhapatnam-530035.
3. S. R. V. R. J. Raju Preventive Officer,
Custom House, Visakhapatnam-530 035.
4. T. Ram Kumar, Preventive Officer,
Custom House, Visakhapatnam-530035.
5. V. Nagama Ileswara Rao,
Preventive Officer,
Custom House, Visakhapatnam-530035.
6. B. A. Krishna Kumar, Preventive Officer,
Custom House, Visakhapatnam-530035.
7. N. Satyanarayana, Preventive Officer,
Custom House, Visakhapatnam-530035. ...

Respondents

Counsel for Applicant : Mr. P. B. Vijayakumar

Counsel for Respondents : Mr. V. Rajeswara Rao, CGSC for R. 1. & 2.

Counsel for : Mr. M. P. Chandramouli, for R. 3 to 7.

CORAM :

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMINISTRATIVE)

HONOURABLE MR. B. S. JAI PARAMESHWAR, MEMBER (JUDICIAL)

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ORAL ORDER

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(Per Hon. Mr. R. Rangarajan, Member (A)
applicant

1. Mr. P. B. Vijay Kumar for the / and Mr. V. Rajeswara Rao
for the official respondents. Respondents 3, 4 and 6 were
not served with notices. Neither the learned counsel for
respondent No.5 nor the respondent No.5 was present. Notice
has been served on respondent No.7 but he was called absent.

2. The applicant in this O.A. was working as U.D. Clerk
and in the seniority list of U.D. Clerks, he was shown at
Serial No.47 and respondents 3 to 7 were shown at Serial
Nos.49, 50, 51, 52 and 55 respectively. The applicant submits
that even in the seniority list of U.D. Clerks published
as on 1.1.1994, he was shown at Serial No.40, above
the private respondents. The applicant was promoted on
ad hoc basis as Preventive Officer by order No.10/93 dated
5.7.93 (vide at Annexure A.3) upto 31.3.1994 and he was
continued as such from 31.3.1994 until further orders by
order No.8/94 dated 29.3.1994 (Annexure-A.4). It is stated
by the counsel for the respondents 1 and 2 that the applicant
was reverted as U.D. Clerk as his services were not regularised
in the D.P.C. meetings held in the year 1994 and 1995, for
the post of Preventive Officer. However, his juniors i.e.

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respondents 3 to 7's services were regularised as Preventive Officers as they qualified in the D.P.C. meetings held in the years 1994 and 1995; whereas the applicant had failed to make a grade and hence he was not promoted as Preventive Officer on regular basis. However, the applicant was promoted as Preventive Officer on regular basis on the basis of selection made in the year 1998. The applicant represented his case for regularisation of his services as Preventive Officer. He was informed by a Memo dated 4.7.1995 (Annexure-A.11) that his case for regular promotion to the grade of Preventive Officer will be considered by the next D.P.C. along with other eligible officers.

3. Aggrieved by the rejection of his representation for regularisation of his promotion as Preventive Officer, the applicant has filed this O.A. praying for calling for the records relating to the proceedings of the various DPCs commencing from 30.6.1994 which were entrusted with the responsibility of recommending the cases of UDCs and other eligible employees for promotion as Preventive Officers and declare on the basis of the same that non-promotion of the applicant on regular basis as Preventive Officer is mala fide and malicious and that he was deliberately ignored inspite of his records being quite upto the mark and consequently to direct the respondent-authorities to consider his case for promotion as Preventive Officer on regular basis within a fixed time



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frame and to protect his seniority as Preventive Officer over his juniors, viz., respondents 3 to 7 in this application.

4. We have checked up the recruitment rules for promotion to the post of Preventive Officer. 25% of the posts of Preventive Officers are to be filled up by way of promotion. It is a selection post. Upper Division Clerks with 5 years service in the grade, Stenographer (Ordinary grade) and (Senior Grade) with 5 years service in the grade ~~and~~ ^{and} the feeder categories.

Note : Candidates would be required to possess such physical standards and pass such written and physical tests and conform to such age limits as may be prescribed by the Central Board of Excise and Customs from time to time.

The promotion Committee will consist of Chairman-Collector of Customs and 2 Group A Officers of Custom House and one Assistant Commissioner of Income Tax as Members.

4. The main grouse of the applicant in this O.A. is that he was not regularised as Preventive Officer even though his juniors, ^{viz., the} Respondents 3 to 7 were regularised without any reason. The applicant submits in the prayer that due to mala fide and malicious intention he was ignored. There is no material in the O.A. which can be relied upon to sustain this statement of the applicant. Further the malicious and mala fide attitude of a person in the hierarchy has to be indicated. No such indication is available. Such a person should also be impleaded as one of the parties in the application. This has also not been done.

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Hence his contention that he was superseded maliciously with mala fide intention is not borne out by facts in the application. Hence this contention has to be rejected.

5. In order to see whether the recruitment rules for promotion to the post of Preventive Officer was adhered to or not in the selection made ~~in~~^{1/ during} the year 1994 and 1995, we called for the Selection proceedings. The Selection proceedings were produced. They were perused and returned back.

6. The D.P.C. held on 30.6.1994 comprised of the Members as indicated in the recruitment rules. The applicant along with other private respondents who were in the feeder channel of U.D.C. and Women Searchers who had completed the qualifying service by October, 1994 were considered. All of them were found conformed to the physical standards and were qualified in the physical tests prescribed for the post of Preventive Officer. The D.P.C. interviewed all the candidates. As the applicant had already been interviewed and awarded marks at the time of his ad hoc appointment, it was considered not necessary to call him for the interview once again along with others and his grading given earlier while appointing him on ad hoc basis was taken into account for preparation of the regular promotion list of all the eligible candidates considered by the D.P.C. which met

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on 30.6.1994. Respondents 5, 6 and 7 were considered fit for promotion as Preventive Officer, in addition to another candidate, namely, Shri Durga Rao. Thus the applicant was not selected in the year 1994.

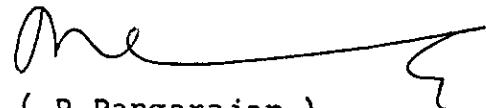
7. In the year 1995 the case of the applicant was also considered when the D.P.C. met on 28.9.1995. The Selection Committee comprised of the officials as mentioned in the recruitment rules. Only two officers were empanelled, namely, respondents 3 and 4. The case of the applicant was rejected in this selection also as he was given a lower grading in that selection proceedings. Thus the applicant had lost his claim for regular posting as Preventive Officer even in the year 1995 selection. However, it was stated that the applicant was selected in the year 1998 for regular promotion as Preventive Officer.

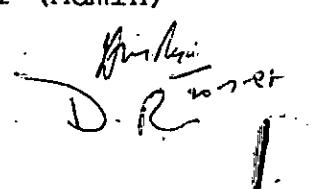
8. From the above narration of events, it is evident that the applicant had not qualified for promotion in the selection made in the year 1994 and 1995 and had qualified only in the selection made in the year 1998. Hence the O.A. has no merits.

9. Accordingly, the O.A. is dismissed. No costs.


(B.S. Jai Parameshwar)
Member (Jdl.) 16.7.98

Dated the 16th July, 1998
Dictated in the open Court.


(R Rangarajan)
Member (Admin)


D.R.

OA.268/96

Copy to:-

1. The Commissioner of Customs Custom House, Visakhapatnam.
2. The Addl. Commissioner of Customs, Custom House, Visakhapatnam.
3. ~~EXRXMXRXBX~~ One copy to Mr. P.B. Vijaya Kumar, Advocate, CAT., Hyd.
4. One copy to Mr. V. Rajeswara Rao, CGSC, CAT., Hyd.
5. One copy to Mr. B. Chandramouli, Advocate, CAT., Hyd.
6. One copy to D.R.(A), CAT., Hyd.
7. One duplicate copy.

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23/7/98
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II COURT

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 16/7/98

ORDER/JUDGMENT

M.A.R.2/C.P.HC.

in

C.A. NO. 268/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPENSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

