

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No. 021/34/2013

Date of order : 24.9.2018

Between:

P VIJAY KUMAR,
S/o. Late Edward Isaac,
Aged: about 48 years,
Occupation: Inspector of Central Excise,
Hyderabad-I Commissionerate, "C" Division,
Posnett Bhavan, Ramkoti, Tilaknagar,
Hyderabad.

Applicant

A N D

1. Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Customs and Central Excise,
North Block, New Delhi,
Rep. by its Under Secretary,
2. Central Board of Customs and Central Excise,
North Block, New Delhi,
Rep. by its Chairman and Spl. Secretary,
3. Commissioner of Customs and Central Excise,
Hyderabad-I Commissionerate,
Hyderabad.
4. Additional Commissioner (P&V),
Hyderabad-I Commissionerate,
Hyderabad.

... Respondents

Counsel for the applicant : Mr. N.Vijay
Counsel for the respondents : Mrs. K.Rajitha

C O R A M :

THE HON'BLE MR .JUSTICE R KANTHA RAO, MEMBER (J)
THE HON'BLE MR. B.V.SUDHAKAR, MEMBER (A)

O R D E R
(Per Hon'ble Mr. Justice R Kantha Rao, Member (J))

Heard Mr. N.Vijay, learned counsel appearing for the applicant and Mrs. K.Rajitha, learned standing counsel for the respondents.

2. The applicant has filed this OA praying to declare the order dated 20.7.2012 issued by Respondent No.4 to the effect that the applicant will not be considered for promotion for a period of one year on his refusal for promotion i.e., from 6.7.2012 or till next vacancy arises whichever is later, as illegal, arbitrary and contrary to the instructions issued by Government of India in that regard and consequently to direct the respondents to consider the case of the applicant for promotion to the post of Superintendent forthwith and pass appropriate orders.

3. The applicant, while he was working as Inspector of Customs and Central Excise Department was promoted to the post of Superintendent vide order dated 4.7.2012 along with 19 others on adhoc basis. The applicant on 6.7.2012 gave a representation to Respondent No.3 i.e., Cadre Controlling Authority seeking to defer promotion to the cadre of Superintendent since his son is studying Intermediate II year with MPC group for the academic year 2012-13 and that being crucial academic year, he could not shift his family to Visakhapatnam zone. Respondent No.4 by impugned order informed the applicant that the Cadre Controlling Authority was pleased to accept the applicant's request to forgo promotion in terms of para 17.12 of DoP&T O.M. dated 25.10.1989 as communicated vide Ministry of Finance letter No.A-32018/3/89-

AD.IIA, dated 22.1.1990. In Para 2 of the impugned order, it is specifically mentioned that the applicant will not be considered for promotion for a period of one year from the date of refusal of promotion i.e., from 6.7.2012 or till next vacancy arises whichever is later.

4. The applicant, however, subsequently gave a detailed representation dated 8.10.2012 to the effect that his case be considered for promotion since the promotion forgone by him was an adhoc one and the instruction of DoP&T do not apply for promotions which are adhoc in nature.

5. The Respondent No.3 through the Deputy Commissioner stated that the applicant was promoted on adhoc basis against a regular vacancy and on account of refusal of promotion by the applicant, the DPC was already conducted and vacancy on account of refusal was already filled up. It is also submitted that subsequent to the E.O(G.O)NO.37 of 2012 dated 4.7.2012, another DPC was constituted with reference to promotion to the post of Superintendent and pursuant to the recommendations of that DPC, the respondents issued three more orders of promotion vide Establishment Orders dated 3.8.2012, 17.9.2012 and 17.9.2012 respectively.

6. It is submitted by the applicant in OA that he was under the impression that his promotion was on adhoc basis against a short term vacancy, but as can be seen from the reply issued by Respondent No.3, the promotion was on adhoc basis against a regular vacancy and, therefore, he submitted representation dated 8.10.2012 to reconsider his

case. His version is that once promotion panel recommended by DPC is exhausted, there is no rule or instruction from the Government of India that the name of the applicant could not be considered in the next DPC constituted for considering names for promotion to the post of Superintendent. It is on the above grounds he filed the OA seeking for the above mentioned reliefs.

7. The respondents in their reply statement contended, inter alia, as follows:

The applicant has unconditionally requested the competent authority that he would like to forgo promotion for one year. Accordingly, his request was accepted by the competent authority and the vacancy on account of his forgoing promotion was filled by another officer from the panel of officers recommended by the DPC. The applicant was promoted against a clear regular vacancy arose on account of promotion of the Superintendents as Assistant Commissioners. Nextly, it is submitted that short term vacancies are filled on administrative exigency as a temporary measure and in such eventuality, the promotion will be enforced and officer will be relieved without giving any time limit. There is no provision under the law to forgo the promotion for short term vacancies. Had the department filled the short term vacancies, the question of accepting the applicant's request for forgoing promotion would not have arisen. But in the instant case, the vacancy for which the applicant was promoted is not a short term vacancy but he was promoted against a vacancy on account promotion of regular Superintendent to the cadre of Assistant Commissioner. As his

promotion is on regular basis, the applicant had an option to forgo promotion unlike in the case of promotion to a short term vacancy, where there is no option to forgo promotion.

8. Nextly, it is submitted that the afterthought of the applicant cannot make the department to undo the action of the department, i.e., revert an officer who with due regard to the directions had gone to Visakhapatnam on promotion. Further, the applicant has gone back on his own decision after 92 days while the promotion order clearly indicates that he should join in the higher post within 15 days of promotion order. It is further explained that there is no provision to fill up the short term vacancies through a regular DPC. As regards short term vacancies which are within one year, they will be filled by officers available on approved panel. In the instant case, the applicant has been subjected to regular DPC and he was promoted from the regular panel and as such the vacancy for which he was promoted is a regular vacancy and not a short term vacancy. The applicant having forgone promotion on domestic ground cannot now re-agitate the same issue.

9. It is further submitted by the respondents that if the applicant had any doubts on this aspect, he should have written to the department and ascertained the correct position, which he has failed to do so, before he gave a letter unconditionally foregoing the promotion offered to him. According to the respondents, since the vacancy against which the applicant was promoted is not a short term vacancy, the applicant is bound by the policy enumerated in paragraph 17.12 of the DoP&T O.M. dated 10.4.1989 and he is not entitled for the benefit of the

exception mentioned therein i.e., that the said policy is not applicable where adhoc promotions against short-term vacancies are refused. Contending as above, the respondents sought to dismiss the OA.

10. The short question which falls for consideration in the present OA is as to whether on the grounds urged in the OA, a direction can be issued to the respondents to consider his case for promotion to the post of Superintendent forthwith in respect of the vacancies which fall for consideration in the 2nd DPC.

11. In the first place, we would like to refer to the letter submitted by the applicant to the competent authority whereunder he stated that he was willing to forgo promotion which was granted to him. He submitted representation dated 6.7.2012. In the representation he stated that his son was studying Intermediate II year course with MPC group for the academic year 2012-13 which is a very crucial year for his future and his personal presence is essential for him and also it was not possible for him to shift his family to Visakhapatnam zone on promotion. He stated that in view of the same, he was willing to forgo his promotion for one year.

12. As per the contents of the letter, it is clear that the representation submitted by the applicant is unconditional. The representation was accepted by the competent authority by proceedings dated 20.7.2012 whereunder he was informed that he will not be considered for promotion for a period of one year from the date of promotion i.e., 6.7.2012 or till the next vacancy arises whichever is later. It is also

clarified that he will lose seniority vis-à-vis his junior promoted to the higher grade earlier irrespective of the fact whether such promotion is ordered by selection or otherwise. Subsequently, the applicant has submitted representation dated 8.10.2012 stating that he felt need of reconsidering his decision of declination of promotion and requested that his name may be considered for promotion during the validity of the present panel as and when a vacancy would arise and the applicant brought to the notice of the competent authority in his representation that para 17.12 of the O.M dated 25.10.1989 is not applicable in his case i.e., where adhoc promotion against short term vacancies are refused. As his promotion was purely on adhoc basis, his promotion can be considered by the competent authority in terms of DoPT instructions under para 17.12.

13. The crucial aspect which requires to be pointed out while dealing with the relief prayed for in the OA is, in the representation submitted by the applicant forgoing promotion granted to him, it is specifically mentioned that he was willing to forgo his promotion for one year. His version is that he was not aware of the fact that promotion was in respect of a short term vacancy on adhoc basis and under the said impression, he submitted letter to the competent authority forgoing promotion for one year. It is rightly contended by the respondents in their reply affidavit that the applicant would have sought clarification from the respondents as to the nature of promotion given to him which he did not do so. Since the promotion is in respect of regular vacancy though on adhoc basis, in our considered view, para 17.12 of the O.M dated 25.10.1989 is not applicable to the facts of the present case. The

respondents in their reply dated 30.11.2012 to his representation dated 8.10.2012 specifically mentioned that in view of the Board's letter dated 26.2.2005 and also in view of the pending Writ Petitions in the High Court and OAs in the Tribunals at various places, the Board directed to fill up all the vacancies on adhoc basis subject to following recruitment rules. Therefore, according to the respondents, every promotion effected will be on adhoc basis only even if it relates to a regular vacancy.

14. Since the applicant undertook in his letter dated 6.7.2012 that he was willing to forgo his promotion for a period of one year, he cannot turn round and state that his case shall be considered for promotion in the subsequent DPC.

15. In view of what all stated hereinabove, there is absolutely no merit in the OA and accordingly we dismiss the same without any order as to costs.

(B.V.SUDHAKAR)
MEMBER (A)

(R KANTHA RAO.J)
MEMBER (J)

Dated: 24th SEPTEMBER, 2018
Dictated in the open court

vsn