

**Central Administrative Tribunal
Madras Bench**

MA/310/0100/19 (in)(&) OA/310/01449/2016

Dated the 13th day of November Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

M.Raje-saker,
S/o S.P.Muthumani,
Deputy Director (Enforcement), (on deputation),
Chennai Zonal Office,
Directorate of Enforcement,
Greams Road,
Chennai. .. Applicant
By Advocate **M/s.P.Ulaganathan**

Vs.

1. The Union of India, rep. by its
Secretary,
M/o Home Affairs,
Govt. of India,
New Delhi 110 001.
2. The Union Territory of Puducherry,
rep by its Chief Secretary,
Govt. of Puducherry,
Puducherry.
3. The Secretary to Govt.(Finance),
Department of Finance,
Govt. of Puducherry,
Puducherry.
4. A.Mohanty,
Officer on wait,

Commercial Taxes Department,
Govt. of Puducherry,
Puducherry.

5. K.Sridhar,
Deputy Commissioner (CT),
Commercial Taxes Department,
Govt. of Puducherry,
Puducherry.
6. G.Srinivas,
Deputy Commissioner (CT),
Commercial Taxes Department,
Govt. of Puducherry,
Puducherry. .. Respondents

By Adovacte **Mr.R.Syed Mustafa, M/s.R.Saravanan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“....to call for the records relating to the Order bearing No.A22012/2/2012/DPAR/SS-1(2)/PF dt. 20.8.14 on the file of the 2nd respondent and quash the same in so far it relates to the posting and transfer of 6th respondent as Deputy Commissioner (CT) and consequently direct the respondents 2 & 3 to consider the applicant for promotion to the post of Deputy Commissioner (CT), designate him as Commissioner (CT) w.e.f. 18.4.07, so as to enable him to discharge the statutory functions and duties attached to the said post and give all the attendant benefits, including seniority, salary etc. to him from the said date and to pass any other order, direction or grant any other relief, that this Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The applicant was appointed as Commercial Tax Officer (CTO) on 22.2.94 and he was promoted as Assistant Commissioner (CT) on 26.6.01. He was also ordered to hold the full Additional Charge of Deputy Commissioner (CT)/Commissioner (CT) w.e.f. 18.4.07. He continued to hold the additional charge of Commissioner (CT) till 29.4.12. Thereafter, the respondents had transferred him and posted as Managing Director(MD) of Puducherry Co-op. Sugar Mills on 29.4.12. The respondents then posted R6 as Deputy Commissioner (CT) holding full additional charge of Commissioner on deputation from Pondicherry Civil Service. According to the applicant, as per Recruitment Rules, the respondents can appoint a person on deputation or transfer only if there are no qualified candidates for promotion. The applicant as well as R4 & 5 are fully eligible for the promotion to the post of Deputy

Commissioner (CT) w.e.f. 13.2.02 onwards. According to the applicant, the Commercial Tax Department is having the following posts:-

“1. Deputy Commissioner (2) Assistant Commissioner (3) Commercial Tax Officer (4) Deputy Commercial Tax Officer (5) Assistant Commercial Tax Officer.”

According to him, The Deputy Commissioner is also the Commissioner of CT under the Puducherry CT Department and he acts as the Commissioner. There is only one post of Deputy Commissioner in Puducherry CT Department. According to the applicant, the post of Deputy Commissioner is a promotion post and he is having 8 years service which qualifies him for promotion to Deputy Commissioner. Without exhausting the avenue of promotion, the respondents had appointed R6 from the Puducherry Civil Services (PCS) and it is highly illegal as it is violative of RR. So, the applicant seeks to quash the order of posting of R6 and prays for considering him for the post of DC(CT).

3. The official respondents 1 to 3 filed a detailed reply and would submit that the applicant was posted as AC (CT) only on adhoc basis w.e.f. 26.6.01. His services were not at all regularized and he is not qualified under the RR for appointment as DC (CT). According to them, he is not having the requisite service of 8 years in the category of CTO and AC. So, they had appointed R6 to the post of DC by deputation from PCS. It was also mentioned in the reply that the department is of the view that appointing PCS officers will be more effective for the Tax Administration. No one can say that he has a right to get promoted to the particular post. R4 had since been compulsorily retired on the basis of departmental action and he is not in service now.

4. Fifth respondent had filed a detailed reply admitting the averments in the OA but seeks to dismiss the OA and prays for promoting him as DC.

5. We have carefully perused the pleadings and various documents and orders produced before the Tribunal. We have also anxiously heard the counsel appearing on both sides. The main contention of the applicant is that as per the RR, he is eligible to be considered for the post of DC as he had the requisite service of 8 years and he is also qualified for promotion. The respondents had not considered his name for promotion from 2002 onwards. The post is being filled up by officers from PCS on deputation/transfer. This is illegal and against the RR notified for the post of DC which is produced as Annexure A16. The official respondent on the other hand would contend that the applicant is not qualified for appointment to the post of DC as he had no requisite eligibility criteria of 8 years “regular” service in the grade of AC and hence his case cannot be considered for promotion. The appointment of the applicant to the post of AC (CT) was purely on adhoc basis and his adhoc service cannot be considered for promotion.

6. On a perusal of the RR produced as Annexure A16, it can be seen that the Pondicherry CT Department has one post of DC (CT) and the method of recruitment is shown as “**by promotion, failing which by transfer on deputation**”. The requisite service rendered for the promotion to the post of DC is 8 years regular service rendered in the grade of Joint Commercial Tax Officer. According to the applicant, he had entered service as CTO on 22.2.94 and he has rendered 8 years service and he is qualified to be posted as DC w.e.f. 13.2.02 onwards. But the

contention of the respondents is that the applicant was appointed to the post of AC only on adhoc basis and it is not a regular appointment in that category. Without regularization he is not entitled to get promotion to the post of DC(CT). The RR says that 8 years of regular service as the requisite qualification for promotion. Since the appointment of the applicant is only adhoc, he is not entitled to claim any benefit. So, he is not having the required qualifying service for promotion. The counsel for the applicant would contend that the applicant was posted as AC (CT) w.e.f. 26.6.01 onwards. He was holding the charge of DC/Commissioner w.e.f. 18.4.07 till 29.4.12. Even thereafter, he continued to hold the same grade of AC and his posting was not regularised by the department. The counsel for the applicant mainly relies on the decision of the Hon'ble Supreme Court in ***Narender Chadha & Others v. Union of India & Others reported in CDJ 1986 SC 037***. He also relies upon the decision of this Tribunal in ***N.K.Kalaimani and Another v. Union of India & Others in OA Nos. 439 & 452 of 1993*** and ***K.Jayaraman v. Union of India & Others in OA 1383/1992 dt. 31.5.1994***. According to the counsel for the applicant, as per the RR, he is eligible to be appointed as DC. The Hon'ble Supreme Court in ***Narender Chadha's*** case referred supra had categorically held that -

“We are not able to understand why the vacancies available to the departmental candidates under Rule 8(ii) of the Indian Economic and Indian Statistical Services Rules, 1961, have not been filled up on regular basis. We find that some of the departmental candidates (petitioners) have been holding the promotional posts on adhoc basis for several years there appears to be no justification for keeping them 'adhoc' so long.....”

The Hon'ble Apex Court directed the government to treat all persons who are stated to have been promoted in Grade IV in each of the services contrary to rule till now as having regularly appointed to the said posts in Grade IV and assign their seniority. In this case also, the applicant who was promoted as AC in 2001 is still continuing as adhoc posting. The only inference that can be drawn is that the posting was of permanent nature and at no point of time he was reverted in the last 15 years. It was also contended that in *N.K.Kalaimani's* case this Tribunal has held that -

“...till the rules are amended, the applicants are entitled to be appointed to the posts of Labour Officer/Employment Officer as per the unamended rules.....”

In the said case, the applicant was not promoted to the post of Labour Officer which he is entitled as per RR for the reason that the amendment of RR could not be effected for a long time. The Tribunal in that case held that, the applicant is entitled to get promoted as per the existing RR. In this case also, the applicant was appointed on adhoc basis to the post of AC in the year 2001 and thereafter, he continues as such till the date of filing of this OA. He had held the charge of the post of DC (CT) w.e.f. 18.4.07 till 29.4.12. Thereafter, the respondents had appointed R6 from PCS to hold the said post. The Long continuous holding of the post of AC itself would show that the appointment to the post of AC was not adhoc or not temporary as stated in the order. It can be true that in the exigencies of service some persons would have to be promoted on adhoc basis. But it is not the case here. The applicant was promoted to the post of AC on adhoc basis from 2002 onwards and he still continues without

regularisation. The dictum laid down in *Narender Chadha's* case clearly applies to these types of cases where the respondents had kept the regularisation pending for indefinite period. So, the only inference that can be drawn from the circumstances is that the applicant was appointed as AC (CT) in a regular post. The DOPT in OM No.28036/8/87-Estt.(D) dt. 30.3.88 has clearly stated how adhoc appointments to be dealt with and the importance of RR as follows:-

“(ii) Revision of Recruitment Rules

Adhoc appointments are also frequently resorted to on the ground that proposals are under consideration to amend the existing Recruitment Rules. The legal position in this regard is that posts are to be filled as per eligibility conditions prescribed in the rules in force at the time of occurrence of the vacancies unless the amended Recruitment Rules are brought into force with retrospective effect. In fact, the practice has been to give effect to amendments in the Recruitment Rules only prospectively, except in rare cases. Hence regular appointment/promotions may be made in all such cases in accordance with the Recruitment Rules in force at the time when the vacancy arises. No adhoc appointments/promotions may be made on the grounds that the Recruitment Rules are being revised or amended.”

From the above, it can be seen that even the departmental instructions are against the appointments on adhoc basis for long years. Now, the only contention raised by the respondents is that, the applicant was not a regularly appointed person as per rules and he cannot seek a promotion. The Hon'ble Supreme Court in the case of *Narender Chadha & Others v. Union of India & Others* (referred supra) has categorically held that when an officer is holding a post for a long period without any

break, it has to be considered as regular posting even though the word adhoc is written in the order. The RR is the basis of every appointment and the rules prefer method of promotion instead of appointing a person on transfer/deputation. Here the respondents had acted in an arbitrary manner against the existing RR when the post became vacant. They have not cared to consider the possibility of promotion before going for deputation. The applicant herein has a right to be considered for promotion as per RR prevailing for appointment to the post of DC (CT). The decision of this Bench in *K.Jayaraman v. Union of India & Others in OA 1383/1992 dt. 31.5.1994* also supports the contention of the case of the applicant. In that case an Assistant Engineer was denied promotion (15 years) as the new RR proposed could not be notified in the meantime.

7. In the backdrop of the above decision, we hold that the promotion of the applicant to the post of AC (CT) has to be considered as regular. He has worked as such from 2001 till date of filing of this OA in 2016 and he was not reverted to any lower post. The action of the respondents in not following the RR before the appointment of R6 in the year 2012 is against the RR and it is arbitrary. So, the order bearing No.A.22012/2/2012/DPAR/SS-1(2)PF dt. 20.8.14 relating to the posting of R6 is liable to be quashed and we do so accordingly.

8. **The respondents are directed to consider the name of the applicant for promotion to the post of DC (CT) as per the then existing RR considering his appointment to the post of AC as regular and pass orders, if he is qualified for**

promotion. We direct the respondent to complete the exercise within a period of three months from the date of receipt of a copy of this order.

9. OA is disposed off accordingly. Consequently MA 100/2019 also stands disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

13.11.2019

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Annexures referred to by the applicants in OA No.1449/2016:

Annexure A1: Recruitment Rules for the post of Deputy Commissioner (CT dt. 24.3.1987.

Annexure A2: G.I. DOP&T OM on procedure to be followed in cases where appointment is to be made by transfer on deputation/transfer basis dt. 03.10.89.

Annexure A3: Letter of R4 giving up the charge of Commissioner (CT) in favour of the applicant dt. 02.4.07.

Annexure A4: R2's order reg. the applicant to hold additional charge of Commissioner (CT) dt. 18.4.07.

Annexure A5: Petition of the Puducherry State Commercial Tax Officers Association to CM/Chief Secretary/Secretary (Finance) dt. 07.5.07.

Annexure A6: Clean copy of Annexure-4 dt. 07.5.07.

Annexure A7: R2's order, relieving the applicant and transfer/posting of L.Kumar to the post of DC (CT) dt. 01.2.12.

Annexure A8: G.O. Ms.No.13 on Constitution of Civil ServicesBoard for transparency and accountability in administration dt. 20.2.14.

Annexure A9: Order relieving L.Kumar and transfer/posting of R6 to the post of DC (CT) on deputation (impugned order) dt. 20.8.14.

Annexure A10: Deputation of applicant as Deputy Director of Enforcement in the Directorate of Enforcement dt. 28.1.16.

Annexure A11: Order posting the applicant as Deputy Director, Directorate of Enforcement, Chennai Zonal Office dt. 03.2.16.

Annexures with Reply:

Annexure R1: Appointment as Commercial Tax Officer.

Annexure R2: Promotion to the post of Assistant Commissioner (CT).

Annexure R3: Addl. Charge as Commissioner (CT).

Annexure R4: Appointment as Managing Director, Puducherry Cooperative Sugar Mills Limited.

Annexure R5: Appointment as Deputy Director, Directorate of Enforcement, Chennai, on Central Deputation.

Annexure R6: Details of Technical posts in Commercial Taxes Department, Puducherry.

Annexure R7: RR for the post of DC (CT).

Annexure R8: Amendment of Rrs for the post of DC (CT).

Annexure R9: Declining of promotion by Thiru A.Mohanty.

Annexure R10: Compulsory retirement of Thiru A.Mohanty.

Annexure R11: Appointment of Thiru L.Kumar.

Annexure R12: Appointment of Thiru G.Srinivas.

Annexure R13: Upgradation of post of DC (CT) as Commissioner of State Tax.