



न्यायालय मुख्य आयुक्त निःशक्तजन
Court of Chief Commissioner for Persons with Disabilities
सामाजिक न्याय एवं अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
निःशक्तता कार्य विभाग / Department of Disability Affairs

Case No.254/1021/12-13

Dated:- 05.09.2014

In the matter of:

Shri M. Abdul Jabar,
Type III/43, Central Excise Quarters,
New Siddapur,
Combatore – 641 044.

..... Complainant

Versus

Office of the Chief Commissioner of Central Excise,
(Through the Chief Commissioner),
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

..... Respondent

Date of hearing : 03.06.2014

Present :

1. Shri M. Abdul Jabar, Complainant.
2. None on behalf of respondent.

O R D E R

The above named complainant, a person with 45% locomotor disability filed a complaint dated 23.12.2012 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding his promotion to the post of Inspector.

2. The complainant submitted that he is working as Deputy Office Superintendent in the Central Excise Department. His request for promotion to the post of Inspector was not acceded to by his Department based on the grounds that Notification of Ministry of Social Justice and Empowerment dated 31.05.2001 was issued only in the year 2001 and is not applicable retrospectively, further once promoted to the cadre of DOS cannot be reverted for purpose of becoming Inspector as per CBEC letter F. No. A.32011/10/88.AD.IIIA dated 10.06.88 which was issued in consultation with DoP&T. The complainant filed an O.A. No.381/2005 dated 25.01.06 in the Central Administrative Tribunal, Chennai who passed an order allowing three months time to his Department for passing a speaking order and the O.A. was allowed. The Hon'ble High Court, Chennai even upheld the order of the CAT, Chennai when the Chief Commissioner of Central Excise, Chennai went for an appeal against the order of

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CAT, Chennai and the writ petition was dismissed directing that no prejudice would be caused for reconsidering the matter afresh and directed for an appropriate order to be passed in accordance with law in force.

3. The complainant also alleged that 3% quota is not being implemented in their Department though Ministry of Finance (Department of Revenue) vide letter No. A2034/62/2005.AD.III dated 05.06.2006 and 27.11.06 reiterating that 3% quota should be reserved for persons with disabilities in the Customs and Central Excise Department for appointment/promotion of Inspector of Central Excise/P.O./Examiner, based on the judgment of Hon'ble High Court of Kerala in O.P. (CAT) No.204 of 2010 and W.P. (C) No.14028 of 2010 dated 26.09.2011, Shri C.A. Joseph, Administrative Officer was promoted as Inspector of Central Excise vide Commissioner of Central Excise, Cochin vide Order No.201/12 dated 05.11.2012.

4. The matter was taken up under Section 59 of the Act with the respondent, namely, the Commissioner of Central Excise (CCA), Chennai vide letter dated 01.05.2013 followed by reminder dated 14.08.2013.

5. The respondent vide letter No. II/39/131/05Estt.CCA dated 20.09.06 and 27.08.2013 submitted that Shri M. Abdul Jabar was appointed as Lower Division Clerk (LDC) under PH quota in 1985 following his selection by the Staff Selection Commission. He was promoted as Upper Division Clerk (UDC) and further promoted as Tax Assistant (TA) in 1994. At that point of time, Tax Assistants had 2 avenues of promotion, one to the post of Deputy Office Superintendent Level-II (DOS L-II) in the ministerial cadre and the other to the post of Inspector of Central Excise in the executive cadre. As per the Ministry's instructions vide letter F. No. B.12017/5/91-AD.III.B dated 13.7.1993 and F. No. A.32011/9/95-AD.III.A dated 19.04.1996, Physically Handicapped (PH) persons should not be promoted to the post of Inspector of Central Excise, as the post was not identified suitable for PH persons at that time. Therefore, Shri M. Abdul Jabar had opted for promotion to the grade of DOS L-II and joined on promotion as DOS L-II in November, 1995.

6. The Ministry of Finance and Company Affairs vide File F. No. 7/6/2003-Coord. Dated 27.02.2003 had communicated the Gazette notification dated 30.06.2001 issued by the Ministry of Social Justice & Empowerment identifying the post of Inspector of Central Excise as suitable for PH persons with one leg affected. Consequent to issuance of the above notification, Shri M. Abdul Jabar, DOS represented vide letter dated 20.09.2004 for promotion to the grade of Inspector of Central Excise. Vide the representation, he had cited two instances viz. Shri Nagaraj of Madurai Commissionerate and Shri Rajasekaran Nair of Cochin Commissionerate, where DOS L-II were reverted and promoted to the grade of Inspector of Central Excise. He had also referred to promotions of PH persons to the grade of Inspector of Central Excise ordered by the Chief Commissioner of Central Excise, Chennai vide C. No. II/3/99/2004-Estt. dated 16.09.2004. In view of the above, he had requested for promotion to the grade of Inspector of Central Excise.

7. At the outset, it is to be noticed that Shri M. Abdul Jabar was promoted as DOS L-II in the year 1995 itself whereas the Ministry of Social Justice & Empowerment's notification identifying the post of Inspector of Central Excise suitable for PH persons with one leg affected was Gazetted on

30.06.2001, which cannot have any retrospective effect unless otherwise stated specifically. Consequent upon issuance of the notification dated 30.06.2001, eligible PH persons in the feeder cadre were promoted to the grade of Inspector of Central Excise vide order dated 16.09.2004, which cannot be equated with his case.

8. Further, vide F.No. A-32011/10/88-Ad.III.A dated 10.06.88, Ministry of Finance had issued instructions on the policy to be followed where a person after getting promotion to a higher grade seeks reversion. Vide the above reference, the Ministry had stated that the matter of reversion of Deputy Office Superintendents Level-II for reversion to their substantive grade of UDC, at their own request for consideration of their promotion to other grades such as Inspector of Central Excise etc. was considered in consultation with Department of Personnel and Training, Ministry of Personnel, Pensions, Public Grievances and they have observed that when the individuals have already accepted the promotion, their reversion to the lower post is not in order as it would create administrative problems in filling up the posts and, therefore, have advised that reversion of the persons working in Deputy Office Superintendent Level-II to UDCs simply for the purpose of considering them for promotion to other posts is not in order. The above instruction has been reiterated by the Ministry vide letter F.No. A-32022/24/92-Ad.IIIA dated 10.09.1992.

9. As regards his reference to the two instances where DOS L-II were reverted and then promoted to the grade of Inspector of Central Excise, it is stated that during 1992, the Department had inadvertently reverted one Shri P. Nagarajan and promoted him to the post of Inspector of Central Excise. When efforts were made to rectify the mistake, he approached the CAT, Madras Bench and based on the judgment dated 5.2.1993 of the Tribunal, he was allowed to continue as Inspector of Central Excise. In fact, it is pertinent to note that, some Deputy Office Superintendents approached the CAT at that time for reversion to lower grade for the purpose of considering them for promotion to the grade of Inspector, which was rejected outright by the Tribunal vide its order in O.A. No. 97/1994 dated 27.09.1996. As such, the case of Mr. Nagarajan cannot be taken as a precedent and hence the claim of Shri M. Abdul Jabar, DOS equating his case with that of the Nagarajan is not in order.

10. As regards Shri M. Abdul Jabar's reference to the case of Shri Raja Sekaran Nair, it is ascertained that the individual is working under Cochin cadre control. Shri Raja Sekaran Nair was promoted to the post of DOS L-II on 19.08.2002. He was reverted from the post of DOS L-II and was promoted to the post of Inspector of Central Excise. As it was a clear violation of the prevailing instructions, as per the Ministry's directions, action was taken by the Cochin cadre control to reinstate Shri Raja Sekaran Nair to the post of DOS L-II. However, he had filed an O.A. before the CAT, Ernakulam Bench and obtained interim order directing the department to maintain status quo. The matter is still sub judice and, therefore, any request of Shri M. Abdul Jabar, DOS to treat his case on par with that of Shri Raja Sekaran Nair can be examine only on final outcome of case. It is pertinent to note here that the Hon'ble Supreme Court in a catena of judgments held that any mistake committed in a case cannot be directed to be perpetuated in other cases. In view of the above said facts, it is stated that the request of Shri M. Abdul Jabar, DOS for promotion to the grade of Inspector of Central Excise cannot be considered as per the Rules.

11. A copy of the reply received from the respondent dated 27.08.2013 was sent to the complainant vide this Court's letter dated 22.11.2013 for his comments/rejoinder.

12. The complainant vide letter dated 09.12.2013 submitted a rejoinder. He submitted that a Speaking Order no.C.No.II/39/131/2005/Estt.CCA dated 20.09.2006 was passed by CCA, Chennai in the case of Shri Raja Sekaran Nair. It was stated in the said order that Shri Raja Sekaran Nair who was promoted to the post of DOS L-II on 19.08.2002 was reverted from the post of DOS L-II and then promoted to the post of Inspector of Central Excise. As it was clear violation of the prevailing instructions, action was taken by the Cochin Cadre control to reinstate Shri Nair to the post of DOS L-II. But Shri Nair filed an O.A. before the CAT, Ernakulam Bench and obtained interim order directing the department to maintain status quo. It is further stated in the order that the matter is still sub-judice and hence any request from the complainant to treat his case at par with that of Shri Raja Sekaran Nair can be examined only on final outcome of the case. The appeal filed by the Department to reinstate Shri Rajasekaran Nair to the post of DOS was dismissed by Hon'ble High Court of Kerala, Ernakulam vide W.P.(C) No. 11575/2007(S) dated 08.08.2011. Likewise, Shri C.A. Joseph, Administrative Officer who is one arm affected person was also promoted to the grade of Inspector of Central Excise based on the order of Central Administrative Tribunal, Ernakulam Bench, Kerala vide O.A. No. 226/2009 dated 13.11.2009. The complainant also wishes to be promoted just like Shri Rajasekaran Nair and Shri C.A. Joseph both of whom are now Inspectors in Central Excise.

13. After considering the written submissions of the respondent and the complainant, a hearing was scheduled on 03.06.2014

14. Going by the factual matrix of the case, it came out that providing or not providing appointment and promotion cannot be regarded as any discrimination or deprivation of rights of persons with disabilities. The issue before this Court revolves around the service matter where the procedure in vogue is equally applicable both for the person with or without disability. Among other aspects, Shri M. Abdul Jabar, Deputy Office Superintendent has cited two cases wherein the officials were reverted from the cadre of Deputy Office Superintendent and were given promotion to the grade of Inspector. It has been mentioned in the last para of the letter that this case might not be cited as a precedent. Hence, the cases have no persuasive or authoritative value simply because a wrong decision made in these cases need not be followed in other cases so as to perpetuate the wrong doing for all times to come. The Department has already given a speaking order dated 20.09.2006 in this regard and this Court is not inclined to interfere in the order of service matter related to relevant statute and rules.

15. The case is disposed off without giving any direction to the respondent.

Sd/-

(P. K. Pincha)
Chief Commissioner
for Persons with Disabilities

