

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-29-6-2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and

The Hon'ble Mr. Justice AR. RAMALINGAM

Writ Petition Nos. 5265 and 18196 of 2001

Union of India represented by

1. The Additional Commissioner (P & V),
Chennai-1, No.121, M.G. Road,
Nungambakkam, Chennai-34.
2. The Assistant Commissioner of C.Ex.
Rajapalayam Central Excise Division. ... Petitioners in both W.Ps.

Vs.

1. Central Administrative Tribunal,
represented by its Registrar,
Chennai Bench, High Court Buildings,
Chennai-104. ... 1st Respondent in both W.Ps.
2. M.S. Hemakumar. ... 2nd Respondent in WP.5265/2001.
2. R. Tamilarasan ... 2nd Respondent in WP.18196/2001.

Writ Petitions filed under Article 226 of the Constitution of India, to issue Writs of Certiorari, calling for proceedings of 1st respondent dated 21-7-2000 made in O.A.No. 1134/99 and another dated 24-1-2001 made in R.A.No. 69/2000; and proceedings of 1st respondent dated 24-1-2001 made in R.A.No. 63/2000 in O.A.No. 1133 of 1999 respectively, and quash the said orders.

For petitioner in W.P.No.5265/2001:- Mr. V. Ravi,
Addl. Central Govt., Standing Counsel.

For petitioner in W.P.No.18196/2001:- Mr. G. Sankaran,
Addl. Central Govt., Standing counsel.

For 2nd respondent in both W.Ps.: - Mr. P.V.S.Giridhar

COMMON ORDER

(Order of Court was made by P. Sathasivam, J.,)

Aggrieved by the common order passed by Central Administrative Tribunal dated 21-7-2000 in Original Application Nos 1133 and 1134 of 1999; and dated 24-1-2001 in Review Applications, Additional Commissioner, Central Excise and another preferred the above Writ Petitions. Since the question raised and the claim of the contesting 2nd respondent is one and the same in both the Writ Petitions and a common order was passed by the Central Administrative Tribunal, they (Writ Petitions) are being disposed of by the following common order.

2. It is seen from the affidavit of Additional Commissioner, Central Excise, Chennai that the Office of the Commissioner of Central Excise, Chennai-I is responsible for the cadre control in respect of Group-B and C staff of the entire Central Excise and Customs Commissionerates in Tamil Nadu excepting Customs House and Airport. The responsibility extends to recruitment, inter-commissionerate posting and transfer, cadre management, etc. For computerisation of work in the Department, cadre of Data Entry Operator (DEO) was created and recruitment is made by the Department as and when vacancies arise. The Central Excise Commissionerates at Chennai, Coimbatore, Madurai and Trichy have a total strength of 251 DEOs in different grades and they are working in different Commissionerates. The cadre control Commissionerate is responsible for distribution of DEOs in different grades, keeping track of actual number of officers working against the sanctioned strength, filling up of vacancies and maintenance of percentage of reservation for SC/ST etc.

3. It is further seen that in the said cadre, three persons resigned, one was terminated and one more post sanctioned by the Ministry on cost recovery basis to be filled up. As such there were actually four vacancies in Data Entry Operator cadre and one on compassionate ground to be filled up. However, due to many factors like abolition of 10% posts, calculation of different grades within the sanctioned posts, allocation of posts amongst different Commissionerates, there arose complications and vacancy position was wrongly calculated as six (and one compassionate appointment) instead of actual vacancy of four. Hence, initial mistake was carried further and selection process to these vacancies was started and offer of appointment was issued on 24-9-99 provisionally for temporary vacancies. As the merit ranking is the criterion for the seniority purpose, the 2nd respondent in both Writ Petitions stood the last in the seniority list so fixed on the merit ranking.

4. It is further stated that percentage of reservation in the case of local recruitment to Tamil Nadu State is 19% for SC and 1% for ST as per the existing instruction. However, when it comes to promotion the reservation is 15% and 7 ½ % for SC and ST respectively. When promotion of DEO Grade-B was undertaken, it was noticed that there was shortage of ST candidates and consequently three ST posts could not be filled in the higher grade. Therefore, a decision was taken to fill the posts of ST candidates and it was decided to recruit ST candidates on All India basis since enough candidates were not available in Tamil Nadu alone. Out of 200 applications received, only 60 candidate appeared for the Skill Test. While doing selection the number of vacancies had to be worked out. It was calculated inadvertently as six vacancies instead of four. Thus six ST candidates and one candidate on compassionate ground were issued with appointment orders. Because of many factors such as abolition of 10%, calculation of different grades within the sanction posts, allocation of posts in different Commissionerates and calculation of strength there was a mistake in calculation of vacancies and it was found that two candidates over and above the strength sanction had been appointed. It is further stated that since the salary cannot be drawn for more officers than the working sanctioned strength, there was no alternative but to terminate two junior most DEOs appointed by the Department. The second respondent in both the Writ Petitions being the junior most were issued with a termination order dated 11-11-99 with immediate effect. This order was issued by the competent authority and the same was communicated on 15-11-99 along with relieving order to them. The said order was challenged before the Central Administrative Tribunal, which by order dated 21-7-2000, quashed the said order and directed to reinstate the applicants therein (respondent 2 herein) as DEO- Grade A with immediate effect. The department filed Review Application Nos. 63 and 69/2000 before the same Tribunal Bench. The same were also dismissed on 24-1-2001. Questioning both the said orders, the present writ petitions have been filed.

5. Heard Mr. V. Ravi, learned Additional Central Government Standing counsel for petitioner in W.P.No. 5265/2001; and Mr. G. Sankaran, learned Additional Central Government Standing counsel for petitioner in W.P.No. 18196/2001; and Mr. P.V.S. Giridhar for 2nd respondent in both the writ petitions.

6. The following points arise for consideration:

i) Whether Central Administrative Tribunal is justified in holding that the order dated 15-11-99 is a non speaking one and liable to be interfered?

ii) Whether the reservation for the post of DEO at the level of Tamil Nadu State is 1% for ST as claimed by the department or 7 ½% as claimed by the second respondent and upheld by the Tribunal?

iii) Whether the Department is justified in relieving the second respondent in both the Writ Petitions on the ground of want of vacancy and the procedure adopted by them is correct?

7. Since we have already narrated the required facts, there is no need to refer the same once again. Both the Central Government standing counsel by drawing our attention to the Original Order of the Tribunal dated 21-7-2000, would submit that the Tribunal failed to see that the order that was challenged before it is the relieving order dated 15-11-1999 and not the termination order dated 11-11-99. There is an error apparent and without looking into the said material aspect, the Tribunal committed an error in arriving a conclusion that the department had not assigned any reason in the relieving order. It is not disputed by the learned Central Government Standing counsel for the second respondent in both the Writ Petitions that both of them were terminated by order dated 11-11-99. For convenience we refer the order of termination of Mr M.S. Hemakumar, 2nd respondent in W.P.No. 5265/2001 which reads as under:

"Order of termination of service issued under the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, B.S.V. MURTHY, Additional Commissioner (P & V), hereby terminate forthwith the services of Shri M.S. HEMAKUMAR, Data Entry Operator Gr.'A' and that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing then immediately before termination of his service, or, as the case may be, for the period by which notice falls short of one month.

Station: Chennai-34, (Sd.xx xx)

Date: 11-11-1999. (B.S.V. MURTHY)

Additional Commissioner (P&V) "

The said order makes it clear that based on Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the competent authority, namely, Additional Commissioner P and V terminated the services of Hemakumar, 2nd respondent in W.P.No. 5265/2001 from the post of Data Entry Operator, Grade 'A'. The said order also shows that in lieu of notice he shall be entitled to claim a sum equivalent to pay/allowances which he was drawing immediately before his termination of service. Rule 5 of the said Rules speaks about termination of temporary service. Rule 5 (1) (a) enables the Government to terminate the services of a temporary Government

servant at any time by notice in writing by the appointing authority. The notice period is prescribed as one month. However, if the appointing authority or the authority decided to terminate the service of the temporary Government servant, the said Government servant is entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month. The Proviso also provides procedure to be adopted by the appointing authority while serving notice on such Government servant. The termination order dated 11-11-1999 contains the relevant enabling provision to the Government and also refers the competent authority, namely, Additional Commissioner who is empowered under the Rule to terminate the services of a temporary Government servant. The order also satisfies compensation by way of one month's salary and allowance in lieu of notice. We are satisfied that the termination order dated 11-11-99 satisfies all the conditions prescribed in Rule 5 of the Rules. Admittedly, the second respondent in both the writ petitions have not challenged the order of termination dated 11-11-99. Instead, they challenged the relieving order dated 15-11-99 which no doubt does not contain the required conditions as stated in Rule 5. Unfortunately, the Tribunal, without referring to the termination order dated 11-11-99, proceeded as if that the relieving order dated 15-11-99 is the original order, terminating the service of the applicants and erroneously found that the same is a non-speaking order and therefore the same is liable to be set aside. It is unfortunate that when the factual error was brought to the notice of the Tribunal by the department by filing Review Applications Nos. 63 and 69/2000, again the Tribunal committed the same error in dismissing both the applications. We sustain the first contention raised by the department.

8. Before going into the other contention, Mr.P.V.S. Giridhar, learned counsel for second respondent, vehemently contended that though the applicants (2nd respondent in both the writ petitions) were provisionally appointed in temporary vacancies to the post of Data Entry Operator-Grade A, the appointment order dated 24-9-99 which contains various clauses, shows that it is not a temporary post and appointment and it is a permanent post, hence the department is not justified in invoking Rule 5 and terminating them from service. While elaborating the above argument, learned counsel has brought to our notice Clauses 2, 5, and 10 of the appointment order dated 24-9-99 and Clauses 12, 14, 15, 17, 19, 20 and 24 of Annexure showing the general conditions of service. He also relied on a judgement of the Supreme Court in RAM PRAKASH MAKKAR Vs. STATE OF HARYANA, reported in (1992) 4 Supreme Court Cases 725 and contended that all those clauses must be read along with the other recitals in the order and if so read, it must be understood the post is the permanent one and cannot be terminated by applying Rule 5. It is relevant to note that the

offer of appointment dated 24-9-99 issued by office of Commissioner of Central Excise, Chennai-I makes it clear that both the applicants were offered appointment "provisionally in temporary vacancies." No doubt, the other conditions referred to above namely probation for a period of two years, the appointment is subject to production of ST certificate etc., it is not clear whether the other conditions mentioned in the Annexure showing the general conditions of service, were part of the appointment order as claimed by the second respondent in both the Writ Petitions. Even if we accept that the said annexure is part of appointment order, Clause 1 of the said annexure makes it clear that "the appointment is for the present temporary post and until further orders" (emphasis supplied). In such a circumstance, when the department makes it clear that the post is temporary one and filling up of the said post is also temporary and the same shall be continued until further orders, merely because certain printed conditions enclosed along with the appointment order, it cannot be construed that it is a permanent post and the applicants were appointed permanently as D.E.O. Grade A. In view of the categorical reference that the post is a temporary post and their appointment is provisional in a temporary vacancy, the assumption of the second respondent that both of them were appointed in a permanent post cannot be accepted. As a matter of fact, the Tribunal has not even concentrated and applied their mind in the said aspect. We are satisfied that the Tribunal failed to look into the material aspect before deciding the issue, and on this ground also the order of the Tribunal is to be interfered with.

9. Coming to the claim that since the recruitment was done on All India basis, the Commissioner, Central Excise, Chennai ought to have applied percentage of representation for S.T candidates as 7 ½ per cent and not 1 per cent, here again, we are of the view that the applicants and the Tribunal failed to consider the relevant aspect. It is not in dispute that the Office of the Commissioner of Central Excise, Chennai-1 is responsible for the cadre control in respect of Group B and C staff of all the Central Excise and Customs Commissionerates of Tamil Nadu except Customs House and Airport. It is specifically stated by the department that the Central Excise Commissionerates, Chennai, Coimbatore, Madurai and Trichy have a total strength of 251 DEOs in different grades and they are working in different Commissionerates. It is also stated that in the said cadre, three persons resigned, one was terminated and one more post sanctioned by the Ministry on cost recovery basis to be filled up. There were actually 4 vacancies in Data Entry Operator cadre and one on compassionate ground to be filled up. But unfortunately, due to many factors like abolition of 10% posts, calculation of different grades within the sanctioned posts, allocation of posts amongst different Commissionerates, there arose complications and vacancy position was wrongly calculated as six (and one compassionate appointment) instead of actual vacancy of four. It is also explained

that initial mistake was carried further and selection process to these vacancies was started and offer of appointment was issued on 24-9-99 provisionally for temporary vacancies. After realising the mistake, since the second respondent in both the writ petitions stood the last two in the seniority list so fixed on the merit ranking, were terminated by following the procedure prescribed. Though in the reply statement before the Tribunal, a statement was made that recruitment to S.T candidates was made on All India basis, the department has explained before the Tribunal as well as before this Court that the vacancies for the posts of Data Entry Operators occurred within the Commissionerates, Chennai, Coimbatore, Madurai and Trichy (total strength of 251 DEOs). In such a circumstance, it is clear that the vacancy that arose at the relevant time only at Tamil Nadu and because of the fact that required ST candidates were not available, the department decided to recruit ST candidates on All India basis. On this ground, it cannot be contended that the reservation for ST is at the rate of 7 ½ per cent by treating it as All India basis. It is not in dispute that percentage of reservation in the case of local recruitment to the Tamil Nadu State is 99 per cent for SC and 1 per cent for ST candidates as per the existing instruction. The department has also clarified that when it comes to promotion the reservation is 15 per cent and 7 ½ per cent respectively for SC and ST. Though this aspect was specifically spelled in the form of reply affidavit before the Tribunal even at the original stage and in the Review Applications, it is unfortunate that the Central Administrative Tribunal has not properly considered and proceeded as if that the vacancies/appointments were on All India basis. We are unable to accept the argument of the learned counsel for the second respondent as well as the conclusion arrived by the Tribunal. On the other hand, the claim made by the Department is well-founded for the simple reason that the vacancies at the relevant time arose within Tamil Nadu (Commissionerates at Chennai, Coimbatore, Madurai and Trichy). We are satisfied that the petitioners-Department made out a case for interference and both the impugned orders are liable to be quashed.

10. Under these circumstances, the order of the Central Administrative Tribunal, Madras Bench dated 21-7-2000 in O.A.Nos 1133/1999 and 1134/199 as well as order of the same Bench dated 24-1-2001 in R.A.Nos. 63 and 69 of 2000 in O.A.Nos. 1133 and 1134 of 1999 are quashed. The termination order dated 11-11-99 and the relieving

order dated 15-11-1999 relating to second respondent in both the Writ Petitions are confirmed. Both the Writ Petitions are allowed. No costs.

R.B.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Registrar, Central Administrative Tribunal,
Chennai Bench, High Court Buildings,
Chennai-104.
2. The Additional Commissioner (P & V),
Chennai-1, No.121, M.G. Road,
Nungambakkam, Chennai-34.
3. The Assistant Commissioner of Central Excise,
Rajapalayam Central Excise Division.

+ TWO COPIES TO M/S GIRIDHAR ASSOCIATES - SR 26665

Common Order in
W.P.Nos. 5265 & 18196/2001

Dt:-29-6-2005

RR (CO)

BP/5.7

सत्यमेव जयते
WEB COPY