

SMT. RENU MULLICK
v.
UNION OF INDIA AND ANR.

NOVEMBER 19, 1993

[KULDIP SINGH AND B.P. JEEVAN REDDY, JJ.]

Service law—Central Board of Excise and Customs—Inter-Collectorate Transfers—Executive instructions regarding—Interpretations of.

Central Excise and Land Customs—Department Group 'C' Posts Recruitment Rules, 1979 : Rule 4—Schedule—Interpretation of.

Under the executive instructions dated May 20, 1980, issued by the Central Board of Excise and Customs, a group 'C' Officer, when transferred on his own request from one Collectorate to another was not entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge i.e. he was to be treated as a new entrant in the Collectorate to which he was transferred and was to be placed at the bottom of the list of the employees of the concerned cadre in the new charge.

The appellant, who joined the Directorate of Statistics and Intelligence, Central Excise and Customs, New Delhi on 17th December 1974 as Lower Division Clerk and was promoted as Upper Division Clerk on May 10, 1981, was transferred, on her own request, to Excise Collectorate, Allahabad by an order dated July 30, 1987 which she joined as Upper Division Clerk on August 4, 1987. In November, 1989, she was promoted as Inspector in accordance with the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979, under which a U.D.C. with 5 years service or U.D.C. with 13 years of total service as U.D.C. and L.D.C. taken together subject to the condition that he should have put in a minimum of two years of service in the grade of U.D.C., was eligible to be considered for promotion. However, by an order dated February 20, 1992, she was reverted from the post of Inspector. She challenged the reversion order before Central Administrative Tribunal, Allahabad. The Tribunal upheld the reversion order and accepted the respondent-Union of India's stand that on transfer the service rendered by her at Delhi was wiped off for all purposes including determination of her eligibility for promotion to the post of Inspector. Against the decision

A of the Tribunal, appeal was filed in this Court.

Allowing the appeal and setting aside the judgment of the Tribunal, this Court,

B HELD : 1. The Tribunal failed to appreciate the elementary rules of interpretation and fell into patent error in non-suiting the appellant.

[830-F]

C 2. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the Collectorate to which he is transferred for the purpose of seniority. The seniority in the previous Collectorate is taken away for the purpose of counting the seniority in the new charge but that has no relevance for judging eligibility for promotion under a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness. [829-G-H, 830-A-C]

E 3. There is no indication, whatsoever in Rule 4 of the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979 that the service period of 5 years and 13 years is not applicable to an officer who has been transferred from one collectorate to another on his own request. On the plain language of the rule, the appellant, having served the department for more than 5 years as U.D.C. and also having completed 13 years composite service as U.D.C. and L.D.C. including two years minimum service as U.D.C., was eligible to be considered for promotion to the post of Inspector. The order reverting the appellant, from the post of Inspector to the post of Tax Assistant is quashed. [830-D-E]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7143 of 1993.

From the Judgment and Order dated 1.6.92 of the Central Administrative Tribunal, Allahabad in O.A. No. 297 of 1992.

H H.K. Puri, Sunil Gupta and J.S. Bey for the Appellant.

V.R. Reddy Additional Solicitor General, Pradeep Jain and P.Par-meshwaran for the Respondents. A

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

According to the executive instructions dated May 20, 1980, issued by the Central Board of Excise and Customs, a Group 'C' Officer, when transferred on his own request, from one Central Excise Collectorate to another, is not entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. The question for our consideration is whether the said officer is further deprived of the said service even for determining his eligibility for promotion to the higher cadre. The Central Administrative Tribunal, Allahabad Bench, has answered the question in the affirmative. This appeal by way of special leave is against the judgment of the Tribunal. B C

Renu Mullick, the appellant, joined service in the Directorate of Statistics and Intelligence, Central Excise and Customs, New Delhi on December 17, 1974 as Lower Division Clerk (LDC). She was promoted to the post of Upper Division Clerk (UDC) on May 10, 1981. She was transferred, on her own request, to Allahabad by the Order dated July 30, 1987, and she joined as UDC on August 4, 1987 in the Central Excise Collectorate at Allahabad. D E

Executive instructions dated May 20, 1980, issued by the Central Board of Excise and Customs provide for inter collectorate transfers on the conditions specified therein. The relevant conditions in para 2(ii) and para 3 are as under :— F

"2 (ii). The transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge; G

3. A written undertaking to abide by the requisite terms and conditions may be obtained from the employees seeking transfers before the transfers are actually effected." H

A The appellant gave the necessary undertaking in the following words:

"I hereby agree to and undertake to comply with the conditions detailed below :

B 1. My seniority will be fixed below the last temporary U.D.C. in the Allahabad Collectorate, i.e. I will be treated as a fresh entrant in the cadre of U.D.C. in the new charge.

2. No transfer, travelling allowance and joining time etc., will be admissible to me as a result of this transfer.

C 3. I will not be considered for further confirmation and promotion in the Directorate of S & I. Central Excise and Customs, New Delhi.

D I will be adjusted against a direct recruit and unreserved vacancy in the grade of U.D.C."

E It is not disputed that on joining Central Excise collectorate, Allahabad, the appellant was placed at the bottom of the seniority list in accordance with the government instructions quoted above. The appellant does not make grievance about the fixation of her seniority in the new charge at Allahabad.

F In the year 1991, the appellant along with several other UDCs was considered for promotion to the post of Inspector by the Departmental Promotion Committee in accordance with the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules 1979 (the rules). Rule 4 read with the Schedule to the rules lays down the eligibility qualifications for promotion to the post of Inspector. The relevant extract is reproduced hereunder :—

G "Inspector : Promotion by selection from U.D.C. with 5 years service or U.D.C. with 13 year of total service as U.D.C. and L.D.C. taken together subject to the condition that they have put in a minimum of two years of serve in the grade of U.D.C.

H Note 3 : If a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade

shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation." A

To clarify Note 3 quoted above, Office Memorandum dated July 19, 1989, was issued which is in the following terms :— B

"When juniors who have completed the eligibility period are considered for promotion, their seniors would also be considered irrespective of whether they have completed the requisite service provided they have completed the probation period. In order to ensure that seniors who might have joined later due to various reasons are not overlooked for promotion." C

On November 11, 1989, the appellant and 79 other candidates were promoted to the post of Inspector. The promotion order stated that the same was provisional and subject to further revision or modifications, if any. The appellant joined as Inspector at Allahabad and continued to serve in that capacity till the impugned order of reversion was passed. On February 20, 1992, the Additional Collector (P & V), Central Excise and Customs, Allahabad, passed an order reverting the appellant from the post of Inspector. No reason was assigned in the order of reversion. No opportunity, whatsoever, was afforded to the appellant before passing the said order. The appellant challenged the order of reversion before the Central Administrative Tribunal, Allahabad. Before Tribunal, the respondents took the stand that on transfer from Delhi to Allahabad, the service rendered by the appellant at Delhi was wiped off for all purposes including for determining her eligibility under the rules for promotion to the post of Inspector. The Tribunal dismissed the application of the appellant. D E F

We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2 (ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she G H

- A has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule.
- B The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.

- C The provisions of the rules reproduced above lay down that a UDC with 5 years service or UDC with 13 years of total service as UDC and LDC taken together subject to the condition that he should have put in a minimum of 2 years of service in the grade of UDC, is eligible to be considered for promotion to the post of Inspector. The rule nowhere lays down that 5 years or 13 years have to be spent in one collectorate. There is no indication, whatsoever, in the rule that the service period of 5 years and 13 years is not applicable to an officer who has been transferred from one collectorate to another on his own request. On the plain language of the rule the appellant, having served the department for more than 5 years as UDC and also having completed 13 years composite service as UDC and LDC including 2 years minimum service as UDC, was eligible to be considered for promotion to the post of Inspector. The Tribunal failed to appreciate the elementary rules of interpretation and fell into patent error in non-suiting the appellant.

- F The appellant has stated in para 11 of the petition that 8 persons junior to the appellant were promoted as Inspectors. According to her, even if it is assumed that she was ineligible, she was entitled to be promoted in terms of Note 3 to the Schedule to the rules (reproduced above) read with Office Memorandum dated July 19, 1989 (quoted above). This argument has not been dealt with by the Tribunal. *Prima facie* there is force in the argument but it is not necessary for us to go into the same.

- H We allow the appeal, set aside the judgment of the Central Administrative, Allahabad, dated June 1, 1992 and allow the application of the appellant before the said Tribunal. We quash the order dated February

20, 1992, reverting the appellant, Renu Mullick, from the post of Inspector to the post of Tax Assistant. We direct that the appellant shall be deemed to be continuing to hold the post of Inspector from the date when she originally joined as inspector as a result of the promotion order dated November 11, 1991. She will be entitled to all the consequential benefits including full back wages. The arrears of back wages shall be paid to the appellant with 12% interest per annum. The appellant shall also be entitled to the costs of this litigation which we quantify as Rs. 10,000.

T.N.A.

Appeal allowed.