

UNION OF INDIA AND ORS.

v

KISHORILAL BABLANI

DECEMBER 3, 1998

[MRS. SUJATA V. MANOHAR AND G.B. PATTANAİK, JJ.]

*Service Law :*

*Indian Administrative Service—Class I and Class II service—Appointment to—Respondent qualified in I.A.S.—On the basis of available vacancies appointed in class II service in Customs Department—Subsequently representation made by appellant for appointment to Class I service—Ground of error in computation of vacancies—Non-compliance with rule providing 50% for direct recruits and 50% for promotees—Rejection of representation—Application before Tribunal—Direction by Tribunal to consider the appointment of the respondent after adjusting the vacancies in strict compliance of 50:50 quota—Appeal by Union of India—Held delay defeats equity—Delay of 15 and 20 years cannot be overlooked when an applicant before the Court seeks equity—The applicants for all these years had no legal right to any particular post—After more than 10 years, the process of selection and notification of vacancies cannot be and ought not to be reopened in the interest of the proper functioning and morale of the concerned service—It would jeopardise the existing positions of a very large number of members of that service—However, it would not be fair now to take away the benefit which the respondent has actually obtained under the orders of the Tribunal—But after this lapse of time, such relief cannot be granted to anybody else.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1328 of 1995.

From the Judgment and Order dated 6.9.94 of the Central Administrative Tribunal at Bombay in T.A.No. 11 of 1992.

Anoop G. Choudhary, Hemant Sharma for V.K. Verma for the Appellants.

G.D. Gupta and S.R. Setia for the Respondent.

A Pankaj Kalra and Vijay Kumar for intervenor.

The following Order of the Court was delivered :

B The respondent appeared in the I.A.S. and Allied Services examination in the year 1974. He passed that examination and was placed at S.No.221 in Category III. Candidates upto S.No.198 were accommodated in Class I service on the basis of the available vacancies. Since the respondent was at S.No. 221, he was accommodated in Class II service in the Customs Department.

C With effect from 10.11.1976, he was working as Customs Appraiser (Class II) in the Bombay Customs House. In 1983, the respondent made a representation to the effect that in 1974, when the Department of Customs and Excise had notified available vacancies to be filled in by the candidates who qualified at the I.A.S. and Allied Services examination, the number of vacancies was wrongly intimated. Initially, this Department had intimated 35 vacancies to be so filled in for Class I posts. This figure was finally revised to 40 vacancies. According to the respondent, 97 vacancies should have been so notified in Class I posts in 1974 and not 40. Had the vacancies been correctly notified, he would have been appointed to Class I post in this Department in 1974. The representation which was made in 1993 was rejected on 23.9.1985.

E Thereafter the respondent filed a writ petition before the Bombay High Court, being Writ Petition No. 1933 of 1985 which was transferred to the Bombay Bench of the Central Administrative Tribunal. The Tribunal, by its Judgment and order dt. 6.9.94, has allowed the application of the respondent. The present appeal is filed from the said judgment and order of the Tribunal.

F The appellants have conceded that as per the Recruitment Rules pertaining to this Department, there is a quota of 50% for direct recruits and 50% for promotees. The vacancies which have to be considered for applying the quota of 50% for direct recruits, are not just permanent vacancies but also temporary vacancies of long term duration. However, by mistake, upto the year 1990, only permanent vacancies which were available to direct recruits on the basis of 50% quota were notified. The position has been rectified from the year 1990. The appellants also accept that had temporary vacancies of long duration been taken into account in 1974, 97 vacancies should have been notified. The Tribunal has, in this connection, rightly referred to a memorandum issued by the Central Board of Revenue dated 20.4.1953 in which the procedure for confirmation, promotion, reversion, retrenchment etc, in grades which are filled partly by direct recruits and partly by promotions, has been laid down.

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H This memorandum clearly mentions that in filling up the permanent vacancies

and long term vacancies and vacancies which though temporary in the first instance, are likely to be long term or permanent vacancies, for example, posts sanctioned for specified periods likely to be renewed, the proportion fixed for direct recruits and promoted officers should be rigidly maintained. Temporary vacancies like leave vacancies may, however, be filled by promotion of departmental members irrespective of the quota fixed for them. The same position is maintained in Office Memorandum dated 8.6.1967 issued by the Ministry of Home Affairs which specifies, "All clear vacancies arising in a post/grade/service due to death, retirement, resignation, promotion of incumbents from one post to higher post/grade, including deputation for a period exceeding 3 years, and vacancies arising from creation of temporary posts which are likely to be made permanent or continued on a long term basis should be filled according to the provisions of the recruitment rules and brought on to the recruitment roster." The appellants, therefore, were required to notify not just permanent vacancies but also temporary vacancies of a long term duration and to determine the total number of vacancies available for direct recruits for their 50% quota accordingly.

The Tribunal has, therefore, given a direction to the appellants to consider the appointment of the respondent after adjusting the vacancies in strict compliance of 50:50 quota system between direct recruits and the promotees for the posts of Assistant Collector of Customs/Central Excise existing when the results of the UPSC examination of 1974 were announced. If the vacancies are found to be large enough, he may be allotted the notional position and seniority along with other entrants who were appointed on the basis of 1974 examination. However, this relief will not entitle the respondent, to benefits of pay and allowances of the post of Assistant Collector against which he had worked till his promotion to that grade.

The appellants submitted before us with some justification, that in a writ petition which was filed in the year 1985, appointments which were made as far back as in the year 1974, ought not to have been disturbed. If a similar relief is to be granted to all those who were in the merit list of 1974 of I.A.S and Allied Services examination and who were placed in Class II posts because of wrong notification of vacancies in the year 1974, there would be a complete disruption in the postings and positions of persons appointed as far back as in the year 1974 who are now occupying various posts not merely in this department but in other various Allied Services as well. The same would be the position if the vacancies for any subsequent years from 1975 to 1990 are now recalculated and the initial posting given to a large number

A of candidates during these years are now disturbed. They are, undoubtedly, right about this apprehension. Delay defeats equity is a well known principle of jurisprudence. Delays of 15 and 20 years cannot be overlooked when an applicant before the Court seeks equity. It is quite clear that the applicants for all these years had no legal right to any particular post. After more than 10 years, the process of selection and notification of vacancies cannot be and ought not to be reopened in the interest of the proper functioning and morale of the concerned services. It would also jeopardise the existing positions of a very large number of members of that service. The respondent, however, submitted that he has, in fact, been given the relief by the Tribunal. As a result, various orders have been issued granting him Group 'A' appointment and subsequent promotions though these are made subject to the outcome of this appeal. The only question is, whether having upheld the merits of his contention, we should now take away the benefit which the respondent has actually obtained under the orders of the Tribunal.

D We do not think that it would be fair to the respondent to take away the benefit which he has secured on the basis of the contentions which are accepted as justified. We, therefore, maintain the relief which has been granted to the respondent. But obviously after this lapse of time, such relief cannot be granted to anybody else.

E One intervention application is before us which was filed in the year 1996 by a person who was recruited in the year 1975. The appellants have also pointed out that after the decision of the Tribunal in the present case, they have received a number of representations from other persons who were appointed during the period 1974 upto 1990. Such belated applications cannot now be considered, we, therefore, dismiss the intervention application. We make it clear that the present order will operate only in respect of the respondent for reasons which we have set out earlier. We also make it clear that in notifying vacancies available to direct recruits the appellants are bound to take into account permanent as well as temporary vacancies of long duration as per the office memoranda of 20.4.1953 and 8.6.1967. However, this will not affect the right of the appellants to decide in accordance with law on the number of vacancies which are required to be filled up or not filled up, while maintaining the ratio of 50:50 between promotees and direct recruits.

In the premises, the civil appeal is dismissed.