

THE SPECIALIST

(By Dwarakanath, Swamy Associates)

"A doctor is one who kills you with his pills, a specialist does it with his bills!"

Recently, I read a letter of a learned ELT tribe, wherein, he had spiritedly argued that Law Officers should look into the legal matters of the department and it is only because of the fact that the officers without any legal qualifications handle the legal affairs, the department is losing bulk of the cases. With due respects, I beg to defer with the above opinion.

First, I would like to analyze the oft-repeated slogan of many departmental officers that "we lose because we are without experts". The normal practice in appointing Special Public Prosecutors and Senior Standing Counsels for appearing for on behalf of the Governments in Criminal and other cases is also being followed in appointing **Special Public Prosecutors (I think that the word prosecutor is applicable only for criminal matters and not for civil matters)** and Senior Standing Counsels for representing the Government in Civil Matters. The idea is to select somebody from the profession, who has seniority and a decent standing in the Bar. In the case of Special Public Prosecutors, the Counsels selected for such posts, normally works exclusively for the Customs and Excise Department (now, of course, the omnipotent Service Tax), but in the case of a Senior Standing Counsel, he is expected to look after all the matters of Central Government in a particular High Court of Judicature. **(The correctness of the usage of the different terms like SPP, SSC, etc. has to be verified).**

As rightly pointed out by my learned friend, the major reason for the department losing the battle is the lack of consistency and continuity in posting the officers in the legal section. By posting an Officer for one year in the Legal Department, the department may do justice to the rotation policy but not to the system. The culprit is not the accused legal ignorance of officers, but the policies of the Department and lack of interest by the Senior Officers in this particular sphere of work. Over a period of time, Legal, Technical, Statistics and some other similar sections have been notified as reserved constituencies for the condemned/to-be condemned officers of the department (and the classification of this particular Officers is an open secret). The department has dutifully failed to infuse adequate importance or incentives to

the officers who are posted to the legal sections, which is a major cause of this fiasco. Further, the working conditions for an officer posted to Legal/Prosecution Branch of a Commissionerate, are extremely miserable. He/she is expected to go to the Office of the Special Public Prosecutor/Senior Standing Counsel either early in the morning or late in the evening. Expecting a Government Jeep or Car by an officer posted in such sections is a mortal sin. Likewise, the facilities provided to the legal sections are really pathetic. Leave alone sophisticated infrastructure like Photocopiers, Internet facility etc. some of the sections do not have a Computer too!

Now to the moot question. How do the appointment or recruitment of a new cadre of Legal Executives (Officers of legal Background) would solve the issue? How many bright and intelligent Law Graduates will come for such posts and what will be their career prospects? What will be their duties and responsibilities? Will they replace the existing Special Public Prosecutors and Senior Standing Counsels or they only assist the existing system?

The CBEC has already experimented in appointing professionals in the sphere of tax collection. Remember those Expert Superintendents and Cost Accountants appointed at the height of Classification and Valuation Wars? Today, where are they and what are they? I am very sure that all the Expert Superintendents might have worked only for a very brief period for the very purpose they were recruited. The distinguished post of the Assistant Director (Costs) has become an unmitigated disaster both for the individuals who have joined after completing one of the toughest examinations of this nation as well as for the department. With scrapping of Rule 173C, their services have thoroughly become redundant and some of the best brains who had joined the Department have already left the department.

Personally, I am of the opinion that instead of solving the problem, we are inviting a new problem by advocating for appointment of Legal Executives. Instead, the existing system can be overhauled by looking deep. Existing incentives like rewards, honorariums are nothing but peanuts. Let them be increased considerably to infuse enthusiasm to the Officers working in Legal/Tribunal Branches. A regular stock taking of the issues in these sections and giving grades to the work done by the Officers and taking these grades as a benchmark of efficiency of such officers for the purpose of promotions, for postings to field formations and considering these grades for

recommending for deputations etc., will also give a fillip to those Officers working in these so- called Sahara.

Before parting...

Losing cases by the Department is not because of lack of good legal support or a Counsel, but, basically because of weak foundation of the cases themselves. The entire issue is interconnected like a circle, with Investigation, drafting of notices, and adjudication and hence all these aspects requires to be strengthened up. No doubt the department has a galaxy of super stars like the Gavaskars, Kapil Devs, Padukones, Tendulkars, Sanya Mirzas, Viswanathan Anands **NOT BECAUSE OF THE SYSTEM, BUT INSPITE OF THE SYSTEM** and let me finish this piece with a salute to one of the most efficient SDRs of this Country, presently working at Chennai, for she is fighting single handedly all the issues and gets maximum number of favorable decisions to the department. Hats off ma'am!