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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.325/2002

New Delhi this the 13 day of September, 2002.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Shri M.K.Kaul
Inspector (Central Excise)
Mayur Vihar Phase II
Delhi-110092. Applicant

(By Shri K.B.S.Rajan, Advocate)

-versus-

1. The Union of India
through the Secretary
Ministry of Finance
Department of Revenue
North Block
New Delhi.
2. The Chairman
Central Board of Excise and Customs
North Block
New Delhi.
3. The Commissioner of Central Excise
Delhi-1
C.R.Building, I.P.Estate
New Delhi-2. Respondents

(By Shri R.R.Bharti, Advocate)

O R D E R

Justice V.S.Aggarwal:-

Applicant (M.K.Kaul) was initially appointed as Lower Division Clerk in the Central Excise Collectorate, Chandigarh. The next promotional post from the feeder post of Lower Division Clerk is Upper Division Clerk. So far as the post of

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Stenographer (OG) is concerned, it is alleged that recruitment to the same is by way of a limited competitive test amongst Upper Division Clerks and the Lower Division Clerks. The applicant had appeared in the limited departmental test for appointment to the post of Stenographer (OG) and on qualifying the same, he was appointed as such in the scale of Rs.330-560/-. Under the relevant recruitment rules, the next promotional post is Inspector (OG). It is alleged that in the wake of the recommendations of the Fifth Central Pay Commission, the Government of India has introduced a scheme i.e. Assured Career Progression Scheme (for short, "the ACP Scheme"). In accordance with the said Scheme, two financial upgradations would be available to Central Government employees after completion of 12 years and 24 years of regular service. Certain doubts had been raised by various departments with respect to the said scheme. Clarifications, were given by the nodal Ministry on 10.2.2000. According to the applicant, he is covered by those clarifications and is entitled to the benefit of the said ACP Scheme. The said benefit has been refused to the applicant and, therefore, he seeks a declaration that he is entitled to the benefit of the ACP Scheme on completion of 24 years of service from the date of his appointment as Stenographer (OG).

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2. In the reply filed, the application as such has been contested. It has been pointed that under the recruitment rules for the relevant period, the method of recruitment to the grade of Stenographer (OG) through a limited competitive test was confined to Lower Division and Upper Division Clerks in the Central Excise Department possessing particular qualifications. On the basis of the such limited competitive test confined to the Lower Division Clerks and Upper Division Clerks, the applicant had been selected. He was later on promoted as Inspector of Central Excise. It has been alleged that direct recruitment to the grade of Stenographer (OG) is permissible only if no suitable Lower Division Clerk/Upper Division Clerk is available. In this case, the applicant is said to have availed the benefit of service as a Lower Division Clerk for his selection as Stenographer (OG) through limited departmental competitive test. There was no direct recruitment. As such he cannot be treated as a direct recruit to the grade of Stenographer (OG). The clarifications of the Ministry, therefore, are stated to be of no avail to the applicant.

3. It is not in controversy that the ACP Scheme had been introduced to avoid stagnation in the Government service in the lower grades. According to it, if an employee stagnates for 12 years without promotion, he gets his first

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financial upgradation after 12 years and if he is not afforded any promotion for 24 years, he gets two financial upgradations. The sole question that arises for consideration is as to whether in the facts of the present case, can the applicant claim both the upgradations? Vide Office Memorandum No.35034/1/97- Estt (D) dated 9.8.1999 in this regard, instructions have been issued. The conditions for grant of the benefit of the said Scheme had been prescribed and the relevant condition reads:-

"5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him."

The recruitment rules for the post of Stenographer (OG) provide the qualifications that are required and further it has been mentioned in the said rules that the post of Stenographer (OG) can be filled by selection through a limited competitive test amongst Upper Division Clerks and Lower Division

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Clerks in the Central Excise Department possessing the qualifications prescribed failing which the post should be filled by direct recruitment.

4. To clear the mist, a reference had been made to the nodal Ministry on the question as to whether appointments made on the basis of limited departmental examination by which an employee joined a new service should be treated as promotion or not and whether the Group 'D' employees appointed as Lower Division Clerk or Grade 'D' Stenographers appointed from amongst Lower Division Clerks should be treated as direct recruits or not.

The answer provided was:-

"If the relevant Recruitment Rules provide for filling up of vacancies of Stenographers Grade 'D'/Junior Stenographers by direct recruitment, induction of LDCs to the aforesaid grade through Limited Competitive Examination may be treated as direct recruitment for the purpose of benefit under ACPS. However, in such cases, service rendered in a lower pay scale shall not be counted for the purpose of benefit under ACPS. The case of Grade-'D' employees who become LDCs on the basis of departmental examination stand on different footing. In their case, relevant Recruitment Rules prescribe a promotion quota to be filled up on the basis of departmental examination. Therefore, such appointments shall be counted as promotion for the purpose of ASPS. In such situations, past regular service shall also be counted for further benefits, if any, under the Scheme."

On the strength of these clarifications, it is claimed that since the applicant was selected as Stenographer (OG) through a limited departmental competitive test, it should be taken as direct recruitment rather than a promotion.



5. On a careful consideration of the relevant rules, we find that this particular plea of the applicant necessarily must be taken to be without merit. As is apparent from the recruitment rules referred to above, the post necessarily has to be filled up through departmental competitive examination. It is confined to the Lower Division Clerks and Upper Division Clerks in the Central Excise Department. In turn, there is no direct recruitment. Direct recruitment is only provided when no suitable candidate from the Lower Division Clerks and Upper Division Clerks is available for the limited departmental competitive test. Therefore, the relevant instructions do not help the applicant because it is clearly provided in the recruitment rules that the vacancies are to be filled by direct recruitment only where the "failing which" clause comes into operation and the induction of Lower Division Clerks to the grade of Stenographer can in no way be treated as direct recruitment. These instructions, therefore, would only come to the rescue of those who are directly recruited. The position herein referred to above is different. Here direct recruitment by and large as per recruitment rules is not approved. It is only in case, as referred to above, when departmental candidates are not available, direct recruitment would be permissible. That is not contemplated in the instructions so much thought by

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the learned counsel for the applicant. Therefore, his claim for two financial upgradations must be taken to be without merit.

6. Resultantly, the present application being without merit must fail and is dismissed. No costs.

V.K.Majotra

(V.K.Majotra)
Member (A)

V.S.Agarwal

(V.S.Agarwal)
Chairman

/sns/