

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 354/2002

New Delhi, this the 20th day of September, 2002

HON'BLE MRS. LAKSHMI SWAMINATHAN, V.C. (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. Central Revenue Chemical Service Association
Central Revenue Control Laboratory,
Hill Side Road,
Pusa Campus, New Delhi though
Shri Anwar Alam, Secretary
2. P.K. Agarwal,
Assistant Chemical Examiner,
Central Revenue Control Laboratory,
Hill Side Road,
Pusa Campus, New Delhi
3. Rajeev Anand,
Assistant Chemical Examiner,
Central Revenue Control Laboratory,
Hill Side Road,
Pusa Campus, New Delhi

Applicants

(By Advocate : Sh. K.C. Mittal with Shri
Harveer Singh)

Versus

1. Union of India ...through
Secretary (Revenue)
Department of Revenue,
Ministry of Finance,
North Block, New Delhi
2. The Chairman,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi
3. Director (Revenue Laboratories),
Central Revenue Control Laboratory,
Hill Side Road, Pusa Campus,
New Delhi
4. The Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
Department of Personnel, North Block,
New Delhi

.... Respondents

(By Advocate : Shri R.R. Bharati)

O R D E R

BY S.A.T. RIZVI, MEMBER (A) :

The Central Revenue Chemical Service (CRCS) Association
together with two individual applicants, both Assistant

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Chemical Examiners (ACE) working in the Central Revenue Control Laboratory (CRCL) have filed this OA with prayers as follows:-

- (i) Inviting applications and holding of interviews by the respondents in respect of direct recruitment quota for the post of ACE be held to be illegal and contrary to the decision of the Government of India (GOI),
- (ii) Amendment to the Recruitment Rules (RRs) made in terms of the recommendations of the Fifth Central Pay Commission (CPC) be declared to take effect from 1.1.1996,
- (iii) Para-1 of the Notification dated 27.8.2000 which notifies the CRCL (Group 'A' and Group 'B' posts) Recruitment Rules, 2000 be quashed and set aside and these Rules made enforceable w.e.f. 1.1.1996, and
- (iv) Selection, if any, made for the post of ACE by the respondent No.5 (UPSC) be quashed and set aside.

2. We have heard the learned counsel on either side at length and have perused the material placed on record as well as the written submissions ~~submitted~~ on behalf of the applicants on 5.9.2002. We have also perused the departmental file relating to the Recruitment Rules.

3. The controversy raised in this OA involves the interpretation of the recommendations made by the Fifth CPC ~~in respect of~~ of the posts of ACE and the Chemical Examiner Grade-I (CE Gr-I) in the CRCS. We, therefore, reproduce the same as under:

"66.163 Prior to 1966, the posts of Assistant Chemical Examiner (Rs.2000-3500) are stated to have been Group A posts. The Third and Fourth CPCs have not commented on the posts. These 91 posts are filled 33.1/3% by direct recruitment and 66.2/3% by promotion. We also find that 30% of the posts of Chemical Examiner Grade II (Rs.2200-4000) and 25% of the posts of Chemical Examiner Grade I are filled by direct recruitment. Since Assistant Chemical Examiner is a feeder post for the post of Chemical Examiner Grade II, its upgradation is not recommended. We also recommend stopping direct recruitment in the Senior Time Scale. This will open up the promotion opportunities to those recruited directly to the scale of Rs.2200-4000."

(emphasis supplied)

4. The learned counsel appearing on behalf of the applicants has vehemently argued that the implication of the last two sentences (underlined) of the extract reproduced by us above is that direct recruitment to the post of CE Gr-I referred to as Senior Time Scale in the above extract should be withheld until the revised Recruitment Rules (RRs) have been notified in terms of the Fifth CPC's recommendations and such RRs should be enforced, according to him, w.e.f. 1.1.1996. The learned counsel has further argued that the same rule should apply in respect of the post of ACE, i.e., no direct recruitment be made for the said post in terms of the RRs of 1993 and these posts should also be filled in accordance with the revised/new RRs notified on 27.8.2000. The learned counsel has repeatedly emphasised that the new/revised Rules notified on 27.8.2000 ought to be enforced w.e.f. 1.1.1996.

5. In order to appreciate the argument that the RRs notified on 27.8.2000 should be made effective from 1.1.1996, we have found it necessary to peruse the departmental file relating to amendment in the RRs relating to the posts in the CRCS. It appears that according to the CRCS Rules for Group 'A' and Group 'B' posts notified in 1996, there was an element of direct recruitment in the grades of CE Gr-I, CE Gr-II and in the post of ACE to the extent of 25%, 50% and 25% respectively. The first two posts aforesaid fell in Group 'A' whereas the third post, namely, that of ACE fell in Group 'B'. In order to over-come the problem of stagnation in service arising from the above, the third CPC had recommended stoppage of direct recruitment at Group 'A' and Group 'B' levels in the CRCS. Accordingly, an Expert Committee was appointed to go into the question of re-organisation of the CRCS. Finally, modified RRs were

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notified on 10.7.1993 which provided for filling up of 75 per cent of vacancies in the post of CE Gr-I by promotion (failing which by transfer on deputation) and 25 per cent by direct recruitment. Meanwhile, direct recruitment to the CRCS remained held up for two decades. The modified RRs of July 1973 had also provided for direct recruitment in the posts of CE Gr-II and ACE to the extent of 30% and 33.1/3% respectively. Following the enforcement of the aforesaid RRs of July 1973 some persons have been directly recruited in the posts of CE Gr-I and CE Gr-II. However, the matter still remained under consideration inasmuch as the problem of stagnation in the CRCS could not be effectively over-come even after the enforcement of the aforesaid RRs of July 1993. In the meantime, the Fifth CPC had started its work and, therefore, the matter was referred to the Commission. A few months before the Fifth CPC's recommendations could be considered and enforced, the DOP&T imposed a temporary ban on amendment etc. of RRs across the board in the various departments of the Government vide their Office Memorandum of 10.2.1997. The further revision of the RRs relating to the posts in the CRCS was, in the circumstances, held up. The DOP&T finally lifted the aforesaid ban some time in May 1998. After a detailed consideration of the various issues involved, the Department of Revenue acting in consultation with the DOP&T, ultimately decided to do away with direct recruitment at the level of CE Gr-I and also at the level of ACE. Insofar as the level of CE Gr-II is concerned, the percentage of direct recruitment was, however, enhanced from 30% to 33.33% with the remaining 66.66% to be filled by promotion. Thus, in the entire hierarchy of posts in the CRCS, direct recruitment is now to be made at the lowest level of Chemical Assistant Gr-II and thereafter at the level of CE Gr-II. In the former case, the posts are to be filled hundred per cent by direct recruitment, whereas

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in the latter, as stated, 33 1/3 per cent posts are to be filled by direct recruitment. The aforesaid modifications have been made in order to ensure that everyone in the hierarchy of posts is able to get at least two promotions in his career. The aforesaid modifications have been incorporated in the aforesaid revised/new Rules notified on 27.8.2000.

6. A careful perusal of the departmental file clearly shows that the respondent-department (Department of Revenue) have interpreted the underlined portion of the extract reproduced in paragraph 3 above to mean that direct recruitment at the level of CE Gr-I was to be dispensed with altogether or, in other words, stopped totally. That is precisely the reason why in the revised/new RRs notified on 27.8.2000, we find that the element of direct recruitment has been dispensed with altogether in relation to the post of CE Gr-I. The post of CE Gr-II at the time carried the pre-revised pay scale of Rs.2200-4000. With the aforesaid rule position coming into force, the promotional opportunities for those holding the post of CE Gr-II have obviously increased. This is what the Fifth CPC had in mind when they said that "This will open up the promotion opportunities to those recruited directly to the scale of Rs.2200-4000". It is a different matter that, though not specifically recommended by the Fifth CPC, the respondent-department has further modified the RRs so as to provide for filling up of the post of ACE 100% by promotion. This modification is also reflected in the aforesaid revised/new RRs notified on 27.8.2000.

7. Stopping of direct recruitment in the Senior Time Scale (CE Gr-I) referred to in the extract reproduced by us in paragraph 3 above only implied that the element of direct recruitment in the post of CE Gr-I was to be done

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away with completely. It did not mean that direct recruitment to the said post (CE Gr-I) was to remain held up until the RRs had been revised in consequence of the Fifth CPC's recommendations. In other words, before the aforesaid revised/new RRs were notified on 27.8.2000, the respondent-authority was free to fill up the posts at various levels in accordance with the July 1993 RRs. This is what they had done and we cannot, in the circumstances, find any fault with it. Moreover, the aforesaid revised/new RRs notified on 27.8.2000 also do not provide for giving retrospective effect to any of the provisions made therein. These Rules can, therefore, have only prospective application and cannot be applied with effect from 1.1.1996. These Rules are, after all, statutory rules and have to be enforced strictly in terms of the provisions made in the Notifications dated 27.8.2000. Being statutory in nature, these Rules cannot be made effective from 1.1.1996 by issuing a Government Order or by taking a Government decision. Besides, we have already noticed, while perusing the aforesaid departmental file that the respondent-authority has not taken any decision to stop direct recruitment in the posts of CE Gr-I and ACE pending formulation/notification of revised/new RRs, nor have they taken any decision to enforce the revised/new RRs w.e.f. 1.1.1996.

8. In the circumstances outlined in the above paragraphs, we find no force in the argument advanced on behalf of the applicants that the Government of India has

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in this case also decided to enforce the aforesaid recommendations relating to modification in the RRs w.e.f. 1.1.1996. We cannot, therefore, find any fault with the respondents' action in filling up the vacancies in the various posts of CRCS by relying on the July 1993 RRs. Vacancies in the posts of CRCS arising on or after 27.8.2000 will, of course, be filled in accordance with the new/revised RRs notified on 27.8.2000. There is no allegation that the aforesaid new/revised RRs notified on 27.8.2000 have been applied for filling up posts arising prior to that date. In the event, persons selected as CE Gr-I in accordance with the July 1993 RRs have already been appointed and they have assumed charge of the post of CE Gr-I. As regards the candidates selected for appointment as ACE, ~~as~~ in accordance with the same RRs of July 1993, ^{candidate} 11 have been recommended by the UPSC but their appointment in the post of ACE is presently held up on account of the interim order of stay passed by this Tribunal on 26.2.2002.

9. In support of the applicants' case, the learned counsel appearing on their behalf has placed before us copies of letters dated 5th May, 1998 issued by the Ministry of Commerce (Department of Supply) on the subject of revision in the pay scales for Scientific Assistant and Scientific Officers, and Office Memorandum dated 2nd July, 1999 issued by the Ministry of Finance (Department of Expenditure) on the subject of upgradation of pay scales of the posts of Senior Technical Assistant, Investigating Officer, Superintendent-cum-Accountant, Junior Technical Assistant and Statistical Assistant in the Department of Company Affairs. We have perused these orders and find that in both of them upgraded pay scales have been given effect to from 1.1.1996. In the present case also the revised/replacement scale applicable to the

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posts in the CRCS have been enforced from 1.1.1996 and, therefore, the applicants' case is not at all furthered by relying on the aforesaid orders. The present case relates to the revision of Recruitment Rules and the issue raised is with regard to the date from which the new/revised rules must come into force. Similarly, no purpose is served by the applicants relying on P. Parameswaran and Others Vs. Secretary to the Government of India decided by the Supreme Court on 5.12.1986 and reported in 1987 (Supp) SCC 18. In that case it was held that the date of implementation of Pay Commission's recommendations should be the same for all the categories of employees and a different date cannot be assigned merely on the ground of administrative difficulties. Clearly, the aforesaid case is distinguished for the reasons just mentioned. It needs to be reiterated, however, that the present OA does not deal with the question of revision of pay scales.

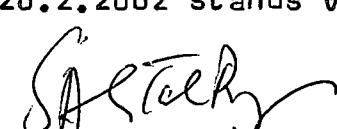
10. Government of India's approval in respect of the Fifth CPC's recommendations was conveyed vide Government's resolution dated 30th September, 1997 issued by the Department of Expenditure in the Ministry of Finance. Paragraph 8 of the Resolution provided that Department specific recommendations not included in the Resolution will have to be processed by the concerned Department/Ministry and Government's approval obtained in consultation with the Ministry of Finance and/or the DOP&T. No indication has been given in the aforesaid Resolution to the effect that as and when Government's approvals are obtained on such Department specific recommendations, the same will be made effective from 1.1.1996. The Fifth CPC's recommendations regarding the RRs in respect of the CRCS is clearly a department specific recommendation in

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which besides the DOP&T and the Ministry of Finance, the respondent-department has also consulted the UPSC. In the case at hand, the DOP&T's approval became available on 19.9.1999 and that of the UPSC on 3.4.2000. Thereupon the Finance Minister approved the proposal to accept the Fifth CPC's recommendations on 28.4.2000. New/revised Rules were accordingly notified on 27.8.2000. Insofar as the question of giving effect to the aforesaid notification from 1.1.1996 is concerned, it would seem that apart from whatever else has been stated in this regard in the preceding paragraphs, such an act would invalidate the appointments already made to CE Gr-I. At the same time, it will constitute a discriminatory act against those already selected for the post of ACE who are, at present, awaiting orders of appointment.

11. For all the reasons brought out in the preceding paragraphs, we find no merit in the present OA which is dismissed. There shall, however, be no order as to costs.

12. The interim order of stay passed by this Tribunal on 26.2.2002 stands vacated.

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 (S.A.T. RIZVI)
 Member (A)


 (MRS. LAKSHMI SWAMINATHAN)
 Vice Chairman (J)

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