

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH AT BANGALORE**

ORIGINAL APPLICATION NO.170/00889/2019

DATED THIS THE 13th DAY OF DECEMBER, 2019

**HON'BLE DR K B SURESH.....MEMBER (J)
HON'BLE SHRI C V SANKARMEMBER (A)**

Karishar Javed,
S/o Md.Sharif,
Aged about 29 years,
Working as Executive Assistant,
Commissioner of Central Tax Audit II,
JSS Towers, 100 Feet Ring Road,
BSK 3rd Stage,
Bangalore-560 085.

...Applicant

(By Advocate Shri.B.S.Venkatesh Kumar)

Vs.

1. The Union of India represented by
Secretary to Government,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.

2. Central Board of Excise & Customs (CBEC) & GST,
By its Chairman,
North Block
New Delhi-110 001.

3. The Principal Chief Commissioner of
Central Tax, Bangalore
P.B.No.5400,
Central Revenue Building,
Queens Road,
Bangalore-560 001.

...Respondents

(By Advocate Shri.Vishnu Bhat, Senior Panel Counsel)

ORDER (ORAL)**HON'BLE DR K B SURESH, MEMBER (J)**

Heard. Annexure A1 is under challenge, we quote from it:

*F.No. A. 32018/37/2017-Ad.III.A
Government of India
Ministry of Finance
Department of Revenue
Central Board Indirect Taxes & Customs*

*4th Floor, Hudco Vishala Building,
Bhikaji Cama Place, New Delhi 110 066
Dated 1st July 2019*

To
All Cadre Controlling Authorities
Under Central Board of Indirect Taxes & Customs

Subject: *Directions regarding the irregularities in promotions in respect of Group 'B' (Non-Gazetted) & 'C' Posts, under CBIC (i.e. TA to STA, STA/DOS/EA to Inspector and Steno Gr-II to Steno Gr-I) – Reg.*

* * * * *

Sir,

I am directed to refer to this office letter F.No. A. 32018/23/2017-Ad.III (A) (pt.) dated 04.01.2018 and to say that the following 11 letters to the Board were issued from the Board without the approval of competent Authority and without proper procedure. The issue has been examined by Committee and committee has concluded based on evidences that all these letters were issued unauthorisedly. It has been decided to withdraw these letters.

| S. No. | Board's letter | Addressed to | Subject |
|--------|--|--|--|
| 1 | <i>F.No.A-32011/03/2015- Ad.III.A dated 23.02.2017</i> | <i>Chief Commissioner, Customs, Chennai</i> | <i>Instruction for conducting of DPC for promotion to the grade of Inspector (Preventive Officer/Examiner)</i> |
| 2 | <i>F.No.A-32018/03/2015- Ad.III.A dated 26.04.2017</i> | <i>Chief Commissioner, Customs, Central Excise & Service Tax, Hyderabad Zone</i> | <i>DPC for promotion to the grade of STA (Now re- designated as Executive Assistant) – reg.</i> |
| 3 | <i>F.No.A-32011/03/2015- Ad.III.A dated 01.05.2017</i> | <i>Chief Commissioner Central Excise, Delhi</i> | <i>Filling up of vacancies of erstwhile grade of DOS- Reg</i> |
| 4 | <i>F.No.A-32018/51/2016- Ad.III.A dated</i> | <i>All CCAs</i> | <i>Qualifying service of TA for appearing in the</i> |

| | | | | |
|----|--|--|--|--|
| | 15.02.2017 & letter dated 23.02.2017 | | | departmental exam for promotion to the grade of STA/Inspector – reg |
| 5 | F.No.A-18013/37/2009- Ad.III.B dated 23.06.2017 | Chief Commissioner, Shillong | | Revision of Rates of Daily Wages (Casual Workers) – reg |
| 6 | F.No.A-32018/69/2015- Ad.III.A dated 27.10.2015 | All CCAs | | One time relaxation in the RRs for the post of LDC |
| 7 | F.No.A-32018/87/2015- Ad.III.A dated 02.12.2015 | All CCAs | | Relaxation of RRs for the post of TA under CBEC |
| 8 | F.No.A-32018/86/2015- Ad.III.A dated 02.12.2015 | All CCAs | | Relaxation of RRs for the post of STA under CBEC |
| 9 | F.No.A- 12034/SSC/01/2014- Ad.III.B dated 28.06.2017 | CC, Customs Delhi, DGRI, DGPM and DG Logistics | | Allocation of (TA in CBEC) recommend for appointment by the SSC on the basis of result of CGL (Main) Exam 2014. Pay scale 9300-34800 Grade Pay 4600/- |
| 10 | F.No.A-32018/03/2015- Ad.III.A dated 30.03.2017 | CC, Hyderabad | | Instructions for conducting of DPC for promotion to the grade of Inspector – reg |
| 11 | F.No.A-32018/74/2015- Ad.III.A dated 05.05.2017 | CC, New Delhi | | Notional effect for promotion to the grade of Stenographer Grade-1-reg |

2. All the zones may conduct Review DPCs by taking corrective action based on the relevant RRs/DOPT guidelines. Where RRs are not available after merger/re-designation of the grade till the new RRs are notified, promotions shall be made as per DOP&T guidelines as stipulated by the Cabinet while approving cadre restructuring or any relaxation allowed by DOPT.

3. All Cadre Controlling Authorities to submit compliance report of these Instructions by the end of July 2019.

4. After completion of review, appropriate counter affidavit may be filed by the CCAs in respect of the Court cases pending on this subject.

5. This issues with approval of Chairman/CBIC.

Encl: As above.

Yours faithfully,

Sd/-

(Mohammad Ashif)

Under Secretary to the Government of India."

2. But then it appears that one Under Secretary in Government of India took it up on himself to pass an order without the juncture of the Government at any stage as No.A/32018/51/2010.Ad.III(A) of Government of India, Ministry of Finance, Department of Revenue dated 15.02.2017. It is not clear who authorised him to issue such an order. But apparently he has sent it to all the Cadre Controlling Authorities and in fact there are series of letters of this nature which we quote:

*F.No.A/32018/51/2010.Ad.III(A)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs*

*4th Floor, Hudco Vishala Building
Bhikaji Cama Place, R.K.Puram,
New Delhi, the 15th February, 2017*

*All Cadre Controlling Authorities
Directors General under CBEC.*

Subject: Qualifying service of Tax Assistants for appearing in the departmental examination for promotion to the grade of STA/Inspector-reg.

Sir,

I am directed to refer to Board's letter F No.A.34011/13/2004.Ad.III.A dated 07.01.2005 (copy enclosed) on the above mentioned subject. CC Kolkata has sought clarification regarding qualifying service of TA for appearing in the departmental examination for promotion to the grade of STA.

2. The matter has been examined. The following clarification is issued for the information and guidance of all Cadre Controlling Authorities.

| <i>S.No.</i> | <i>Clarification Sought</i> | <i>Clarification/Remarks</i> |
|--------------|---|--|
| <i>1</i> | <i>Whether TAs who are yet to be confirmed, though they</i> | <i>In case of Direct recruits the officers who have not been</i> |

- may have passed the confirmation exam, should be allowed to sit for the departmental examination for promotion to the grade of erstwhile STA (now designated as EA) confirmed in the grade of the STA/TA, should not be allowed to appear for Departmental Exam for promotion to the grade of STA/Inspector. However, this clause is not applicable for promote officers.
- 2 Whether the TA/STA/Inspector are eligible to appear in the Departmental Examination at the age of 50 years Yes. TA /STA/Inspectors are eligible to appear in TA/STA/Inspector Departmental Examination (at the age of 50 years)
- 3 If a TA had qualified in the departmental examination for promotion during his period of probation and has now completed the period of probation and qualifying service for probation, should he be considered to the promotion to the grade of erstwhile STA (now EA) In view of reply at Sr. No.1 TA is not eligible to appear in the examination during the probation.
- 4 The status of those who have already been promoted to the next higher grade, in case the qualification of TAs who have already passed the promotion exam before completion of their probation is held to be invalid and whether their promotion also be held invalid requiring them to be reverted to their earlier post. Yes. The qualification of TA/STAs who have already passed the promotion exam before completion of their promotion is held to be invalid and their promotion also be held invalid requiring them to be reverted to their earlier post.

This issues with the approval of Member (A).

Yours faithfully,

(Rajpal Singh)
Under Secretary to the Govt. of India.

F.No.A.32018/51/2016-Ad.III(A)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

4th Floor, Hudco Vishala Building
Bhikaji Cama Place, R.K.Puram,
New Delhi, the 23rd February, 2017

To

All Cadre Controlling Authorities/
Directors General Under CBEC.

Subject: Qualifying service of Tax Assistants for appearing in the departmental examination for promotion to the grade of STA/Inspector-reg.

Sir,

I am directed to refer to Board's letter F.No.A.34011/13/2004.Ad.III.A dated 07.01.2005 (copy enclosed) on the above mentioned subject. CC Kolkata has sought clarification regarding qualifying service of TA for appearing in the departmental examination for promotion to the grade of STA.

2. The matter has been examined. The following clarification is issued for the information and guidance of all Cadre Controlling Authorities:-

| S. No. | Clarification Sought | Clarification/Remarks |
|--------|----------------------|-----------------------|
|--------|----------------------|-----------------------|

- | | | |
|---|--|--|
| 1 | Whether TAs who are yet to be confirmed, though they may have passed the confirmation exam, should be allowed to sit for the departmental examination for promotion to the grade of erstwhile STA (now designated as EA) | In case of Direct recruits the officers who have not passed their Departmental confirmation exam in the grade of TA, should not be allowed to appear for Departmental Exam for promotion to the grade of STA/Inspector. However, this clause is not applicable for promote officers. |
| 2 | Whether the TA/STA/Inspector are eligible to appear in the Departmental Examination at the age of 50 years | As per RR's notification G.S.R.1172(E) dated 26.12.2016, "No age bar". |

3. *If a TA had qualified in the departmental examination for promotion during his period of probation and has now completed the period of probation and also the qualifying service for promotion, should he be considered for promotion to the grade of erstwhile STA (now STA (now EA))* *In view of reply at Sr. No.1, TA who have passed promotional exam in the grade of STA after qualifying confirmation exam and also completed the qualifying service, should be considered for promotion to the grade of erstwhile STA (now EA).*

This issue with the approval of Member (A).

Yours faithfully,

(Rajpal Singh)

Under Secretary to the Govt. of India.

*F.No.A.32018/51/2016-Ad.III(A)
Government of India
Ministry of Finance
Department of Revenue*

*4th Floor, Hudco Vishala Building
Bhikaji Cama Place, R.K.Puram,
New Delhi, the 5th May, 2017*

*To
The Chief Commissioner
Central Excise, Delhi Zone
C.R.Building, I.P.Estate New Delhi*

Madam

Sub: Notional effect for promotion to the grade of Stenographer Grade-I:reg.

Please refer to your letter C.No.11-3(11)CCA/Prom to Steno-12015/18768 dated 15.02.2017 wherein clarifications have been sought whether the length of service in Steno Grade-II for granting promotions to Steno Grade-I should be taken as 3 years or 5 years.

2. In this context, it is informed that with the approval of Chairman, CBEC, a clarification has already been issued vide letter F.No.A-32011/03/2015-Ad.III-A dated 02.08.2016. It has been clarified that pre-cadre and post-cadre vacancies in all the grades may be filled on the basis of existing RRs for the relevant vacancy year. All CCAs were, accordingly, advised to conduct DPCs on the basis of the existing RRs for the respective grades.

3. After perusal of your letter, it appears that Delhi Zone has given promotion on the basis of RRs dated 26.10.2004, after taking into account the length of service of 5 years, which has already been superseded by G.S.R. 184(E) dated 03.03.2011, which provides that the Central Excise and Customs Department Stenographer Grade II (Group "C") Recruitment Rules, 2011.

(i) They shall be deemed to have come into force on the 1st day of January, 2006.

(ii) All persons appointed on a regular basis at the time of commencement of these rules to the erstwhile grade of Stenographer Grade-III shall be deemed to have been appointed as Stenographer Grade-II under these rules.

(iii) The service rendered by them in the grade of Stenographer Grade-III before the commencement of these rules shall be taken into account for deciding the eligibility for promotion to the next higher grade".

4. In terms of Inspect RR G.S.R. 494 dated 29.11.2002, Stenographer Grade-II having 2 years of regular service is eligible for promotion to the grade of Inspector. Since, it is not feasible for a person joining in the Grade Pay of Rs.2400/- to be promoted to the grade pay of Rs.4600/- in a span of two years, the Board decided that the re-designated Stenographer Grade II shall be promoted to Stenographer Grade-I first on the basis of existing RR of Stenographer Grade-I and after completion of 2 years of service in the Grade of Stenographer Grade-I, they shall be promoted to the grade of Inspector.

5. Further, for the vacancy year 2004 to 2015, the only RR available for the promotion of Steno Grade-I was G.S.R. 683(E) dated 15.10.2004 as after implementation of 6 CPC, pay scale Rs.500-8000 is not in existence. The Board had issued many clarification from time to time including letter dated 02.08.2016, 07.09.2016, 30.12.2016 & 13.01.2017.

6. With regard to grant of notional promotion, the Board has already clarified vide letter dated 13.01.2017 issued to Pune Zone and endorsed to all Chief Commissioners/Directors Generals under CBEC. **The referred Para 6.4.4 of DOPT OM dated 10.04.1989 has only financial implications.**

7. Approximately 14 Zones, out of the total of 18 Zones of Customs and Central Excise have granted promotion in the grade of Stenographer Grade-I by taking the eligibility service of 3 years and have further promoted their officers to the grade of Inspector on completion of 2 years of service. To maintain uniformity among all Zones under CBEC, you are requested to review the case and the DPC held on 05.05.2015 and grant of notional promotion to eligible candidates w.e.f their date of eligibility for the relevant vacancy years, as per provisions contained in existing RRs of that time i.e. Stenographer Grade-I issued vide G.S.R 683 dated 15.10.2004, and also promote the eligible officers to the grade of Inspector of Central Excise and Customs on completion of 2 years of service in the grade of Stenographer-I.

8. *The action taken in the matter may be communicated to the Board at the earliest.*
9. *This issues with the approval of Member (Admn) CBEC.*

Yours faithfully,

(Rajpal Singh)

Under Secretary to the Government of India.

*F.No. A. 32011/03/2015-Ad.III.A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
4th Floor, Hudco Vishala Building,
Bhikaji Cama Place, New Delhi 110 066
Dated 23.03.2017*

*To
The Chief Commissioner of Chennai Central Excise
Chennai Customs Zone
Chennai*

Note:- This is in continuation of Board's instructions dated 2.8.2016 – regarding

Subject: Instructions for conducting of DPC for promotion to the grade of Inspectors (Inspector of Central Excise) – Reg.

** * * * **

Sir,

I am directed to refer your letter C.No. II/39/453/2017-CF-CCA dated 14.2.2017 regarding, "Representations received for promotion to the grade of Inspector Central Excise citing board's letter dated F.A 32011/03/2015-Ad.IIIA dated 23.2.2017 – clarification sought for", that DPC for promotion to the grade of Inspector (Inspector of Central Excise) may be conducted to fill up the existing vacancies from the feeder grade of officers as per old Recruitment Rule 2002 for those who are completing regular service of 2 years as STA as on 01.04.2017.

2. DOPT vide their OM No. 22011/6/75-Estt (D) dated 30.12.75 states that the Supreme Court has also ruled that the vacancies should be filled according to the rules in force when the vacancies arose. The Hon'ble Supreme Court's judgment in the case of Y.V. Rangaiah and Ors. Vs. J. Sreenivasa Rao and Ors on 24.03.1983, inter alia states that we have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

3. Accordingly, I am directed to request you to conduct DPC to fill up the vacancies of Inspectors (Inspector of Central Excise) from the feeder cadre based on the Recruitment Rules 2002 for those who are completing regular service of 2 years as STA as on 01.04.2017.

*Yours faithfully,
Sd/-*

(Rajpal Singh)
Under Secretary to the Government of India.”

“F.No. A. 32011/03/2015-Ad.III.A
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
4th Floor, Hudco Vishala Building,
Bhikaji Cama Place, New Delhi 110 066
Dated 23 Feb 2017

To
The Chief Commissioner of Customs
Chennai Customs Zone
Chennai

Subject: Instructions for conducting of DPC for promotion to the grade of Inspectors (Preventive Officer/Examiner) – Reg.

* * * * *

Sir,

This is in continuation of Board's instructions dated 02.08.2016

I am directed to say that DPC for promotion to the grade of Inspector (Preventive Officer/Examiner) may be conducted to fill up the existing vacancies from the feeder grade officers as per old Recruitment Rule 2002 for those who are completing regular service of 2 years as STA as on 01.04.2017.

2. *DOPT vide their OM No. 22011/6/75-Estt (D) dated 30.12.75 states that the Supreme Court has also ruled that the vacancies should be filled according to the rules in force when the vacancies arose. The Hon'ble Supreme Court's judgment in the case of Y.V. Rangaiah and Ors. Vs. J. Sreenivasa Rao and Ors on 24.03.1983, inter alia states that we have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.*

3. *Accordingly, I am directed to request you to conduct DPC to fill up the vacancies of Inspectors (PO/EO) from the feeder cadre based on the Recruitment Rules 2002 for those who are completing regular service of 2 years as STA as on 01.04.2017.*

4. *A compliance report may be sent to this office.*

Yours faithfully,
Sd/-
(Rajpal Singh)
Under Secretary to the Government of India.”

3. The respondents produced a table of the letters issued by the Board and the action taken there on, which we quote:

Letters Issued By Board- Action Taken Thereon

| SI No. | Board's letter Reference No. | Addressed to | Subject | Instructions contained herein | Action taken in this Zone | Remarks |
|--------|--|-------------------------------------|---|---------------------------------------|--|--------------------------------|
| 1 | F.No.A-32011/03/2015-Ad.III A dated 23.02.2017 | Chief Commissioner, Customs Chennai | Instructions for conducting of DPC for promotion to the grade of Inspector (Preventive Officer/ Examiner) | Board's instructions contained herein | Considering the Board's instructions in letter dated 23.2.2017 and also letter dated 23.03.2017 addressed to CC, Chennai Central Excise and the promotions made to the grade of Inspector in various zone, DPC for promotion to the grade of Inspector as per the Recruitment Rules 2002, was held for the year 2017-18 on 22.06.2017. 11 Officers were empanelled for promotion for the year 2017-18. | Corrective action to be taken. |

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| 2. F.No.A-32018/03/2015-Ad.III A dated 26.01.2017 | Chief Commissioner, Customs, Central Excise & Service Tax, Hyderabad Zone | DPC for promotion to the grade of STA (now re-designated as Executive Assistant) | L et te r n ot r e c ei v e d in th is Z o n e Though the communication was not received, considering Board directions to Chennai Customs vide letters dated 23.2.2017 and Ministerial Officers Association letter also letter dated 23.03.2017 addressed to CC, Chennai Central Excise regarding the promotions made to the grade of STA in various zone, the DPC for promotion to the grade of STA as per the Recruitment Rules 2003, was held for the years 2016-17 and 2017-18 and 22.06.2017. 6 Officers were empanelled for the year 2016-17 and 44 Officers were empanelled for the year 2017-18. | Corrective action to be taken. |
| 3 F.No.A-32018/03/2015-Ad.III A dated 01.05.2017 | Chief Commissioner, Central Excise, Delhi | Filling up of vacancies of erstwhile grade of DOS | L et te r n ot Annual DPC for promotion to the grade of erstwhile DOS was held on 15.03.2013 i.e. prior to merger of cadre of DOS & STA. | No action is necessary |

| | | | | | |
|---|-----------------|--|---|---|-------------------------------|
| <p>4 F.No.A-32018/51/2016-Ad.III A dated 15.02.2017 & letter dated 23.02.2017</p> | <p>All CCAs</p> | <p>Qualifying service of TA for appearing in the departmental exam for promotion to the grade of STA/Inspector –reg.</p> | <p>r e c e i v e d i n t h i s z o n e A l l o w i n g D R T A s w h o a r e y e t t o b e c o n f i r m e d i n t h e g r a d e</p> | <p>In the absence of any specific instructions in the Department Examination Rules with regard to the qualifying service of TAs for appearing in the departmental exam for promotion to the grade of STA/Inspr, DR Tax Assistants who had passed the confirmation exam but yet to be confirmed were allowed. However, they have been promoted to the grade of STA only after completion of the probation period & confirmation in the grade of Tax Assistant.</p> | <p>No action is necessary</p> |
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| 5 | F.No.A- 18013/37/20 09 Ad.III B dated 23.06.2017 | Chief Commissioner, Shillong | Revision of Rates of Daily Wages (Causal Workers)- reg. | | | Not addressed to all CCAs and instructions issued to the specific zone |
| 6. | F.No.A- 32018/69/20 15 Ad.III A dated 27.10.2015 | All CCAs | One time relaxation in the RRs for the post of LDC | | | Not received in this zone |
| 7 | F.No.A- 32018/87/20 15 Ad.III A dated 02.12.2015 | All CCAs | Relaxation of RRs for the post of TA under CBEC | | | Only comments of stake holders sought which has been sought. Withdrawal of the letter does not have any implication and no corrective action required |
| 8. | F.No.A- 32018/86/86 /2015 Ad A dated 02.12.2015 | All CCA's | Relaxation of RRs for the post of STA under CBEC | | | |
| 9. | F.No.A.1203 4/SSC/01/20 14 Ad.III B dated 28.06.2017 | CC, Customs, Delhi DGRI, DGPM and DG Logistics | Allocation of TA in CBEC recommended for appointment by the SSC on the basis of result of CGL (Main) Exam 2014. Pay scale 9300-34800 Grade Pay 4600 | | | Not addressed to all CCAs and instructions issued to the specific Office |
| 10. | F.No.A- 32018/03/20 15-Ad.III A dated 30.03.2017 | CC, Hyderabad | Instructions for conducting of DPC for promotion to the grade of Inspector | Letter not receiv ed in this zone | Considering the Board's instructions and the promotions made to the grade of Inspector in various zone, DPC for promotion to the grade of Inspector as per the Recruitment Rules 2002, was held for the year 2017-18 on 22.06.2017. 11 Officers were empanelled for promotion for the year 2017-18 | Corrective action to be taken |
| 11. | F.No.A- 32018/74/20 | CC, New Delhi | Notional effect for promotion to the grade of | Board issued | Board Vide letter F.No.C.12034/56/2011 | No action is |

15-Ad.III A
dated
05.05.2017

Stenographer Grade I

directions to Delhi Zone to review the promotion to the grade of Steno Gr I by taking the eligibility service of 3 years and grant promotional promotion to eligible candidates w.e.f their date of eligibility for the relevant vacancy years, as per Steno Gr I RR of 2004 and also promote the eligible

Ad.III.B dated 21.11.2013 has informed that framing of RR of Stenographer Gr-I is under consideration in the Board in consultation with DOPT and have informed to take action as per the existing RR. Accordingly promotions to the grade of Steno Gr.I as per the RR 2004 was carried out on adhoc basis and subsequently regularised as per RR 2015 wherein the qualifying service considered was 10 years.

necessary

With regard to promotion to the grade of Inspr only erstwhile Steno Gr II (redesignated Steno Gr I) & erstwhile Steno Gr III (redesignated Gr II) were promoted on adhoc basis under clause 12 (b) and 12(c) respectively of RR 2002.

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4. Learned counsel for the applicant on the other hand relies on the judgment of the Hon'ble Apex Court, produced as Annexure A8, which we quote:

[2013] 9 SCR 593

KUSHESWAR NATH PANDEY

V.

STATE OF BIHAR & ORS.

(Civil Appeal No.6658 of 2013)

August 5, 2013

[H.L.GOKHALE AND J CHELAMESWAR, JJ.]

H.L. GOKHALE, J.

1. Heard Mr. Nagender Rai, learned senior counsel appearing for the appellant, Mr. Arijit Prasad, learned counsel for the State of Bihar and Mr. Mohan Jain, learned Additional Solicitor General for the respondent no.5.

2. Leave granted.

3. This appeal seeks to challenge the judgment and order rendered by the Division Bench of the Patna High Court in L.P.A. No. 266 of 2011 dated

19.9.2012 whereby the Division Bench reversed the judgment of the Learned Single Judge of that High Court in case No. 4369 of 2010.

4. The facts leading to this case are as under:
4.1 The appellant herein joined the service under the State of Bihar on 5th May, 1979 and on 29th August, 1981, he was promoted as a Correspondence Clerk. An order was subsequently issued by the Finance Department on 13.11.1998 granting him promotion with effect from 1st September, 1991 which was a time bound promotion. Subsequently it was found that this promotion was irregular for not passing a promotional examination prior thereto and therefore the orders were issued on 16.9.2009 and 5.10.2009 for canceling this time bound promotion.

5. Being aggrieved by that order, the appellant filed the above referred writ petition No. 4369/2010. Learned Single Judge of the High Court who heard the matter allowed that writ petition. He held that the time bound promotion granted to the appellant eleven years earlier was not because of any fault or fraudulent act on the part of the appellant, and therefore could not be cancelled. The Learned Single Judge allowed that writ petition and set aside the order of cancelling his promotion. It is also relevant to note that the appellant had passed the required examination in the meantime in 2007 and had retired on 31st May, 2009.

6. Being aggrieved by that order, respondents herein, filed an appeal which has been allowed by the Division Bench. The Division Bench found that the promotion was not approved by the competent authority and passing of the Accounts examination was condition precedent and therefore the decision of the Government to cancel his promotion was a proper one. Being aggrieved by this judgment, the present special leave petition has been filed.

7. Mr. Rai, learned senior counsel for the appellant points out that there was no fraud or misrepresentation on the part of the appellant. The appellant was given a time bound promotion by the concerned Department. If at all the examination was required to be passed, he had passed it subsequently in 2007 much before the cancellation orders were issued in 2009. Mr. Rai relied upon two judgments of this Court in case of Bihar State Electricity Board and Another v. Bijay Bhadur and Another reported in [(2000) 10 SCC 99] and Purushottam Lal Das and Others v. State of Bihar and Others reported in [JT 2006 (12) SC 581 : (2006) 11 SCC 492] wherein it has been held that recovery can be permitted only in such cases where the employee concerned is guilty of producing forged certificate for the appointment or got the benefit due to misrepresentation.

8. The learned counsel for the State of Bihar submitted that under the relevant rules passing of this examination was necessary. He referred us to the counter affidavit of the respondent No.1 wherein a plea has been taken that under the particular Government Circular dated 26.12.1985 the

amounts in excess are permitted to be recovered. He relied upon clause (j) of the Government Circular dated 1st April, 1980 to the same effect.

9. Mr. Jain, learned Additional Solicitor General appearing for the Accountant General drew our attention to another judgment of this Court in Chandi Prasad Uniyal and Others v. State of Uttarakhand and Others reported in [JT 2012 (7) SC 460 : (2012) 8 SCC 417] and particularly paragraph 14 thereof which states that there could be situations where both the payer and the payee could be at fault and where mistake is mutual then in that case such amounts could be recovered.

10. In our view, the facts of the present case are clearly covered under the two judgments referred to and relied upon by Mr. Rai. The appellant was not at all in any way at fault. It was a time bound promotion which was given to him and some eleven years thereafter, the Authorities of the Bihar Government woke up and according to them the time bound promotion was wrongly given and then the relevant rules are being relied upon and that too after the appellant had passed the required examination.

11. In our view, this approach was totally unjustified. Learned Single Judge was right in the order that he has passed. There was no reason for the Division Bench to interfere. The appeal is therefore allowed. The judgment of the Division Bench is set-aside. The writ petition filed by the appellant will stand decreed as granted by the Learned Single Judge. The parties will bear their own costs.

5. But a small problem in the judgment is that it is related to time bound promotion which without the juncture of any authority, it is the right of the employees to expect whereas the issue in this case is the right of the promotion of an employee following a departmental promotion committee. Having examined the matter and having found the concerned person suitable for such promotion then the authority shall issue an order. However, since the recruitment rules have been amended in 2015, the said departmental promotion committee could not have functioned at all. Therefore the lament of the applicant is that they are in fact in no way responsible for this. It is just a mistake on the part of somebody who had created all this matter.

6. **Apparently the Under Secretary who had created all these issues had been prosecuted criminally and is now said to be incarcerated in Tihar Jail**

according to Shri.Vishnu Bhat, learned counsel for the respondents. But then Shri.B.S.Venkatesh Kumar, learned counsel for the applicant submits that this particular Under Secretary is now working in a more responsible post in Food Corporation of India. We will leave it to the discretion of the concerned authority to decide all these matters.

7. But then we hold that if the applicant had been assumingly promoted by a mistake then the consequential action should necessarily follow. But it does not mean that the efforts put in by the applicant in the promoted post should have been in vain. They will be eligible and entitled to retain the benefits they have received already that need not be refunded on any account. But other consequential action following appropriate action by the respondents will naturally follow. OA is held to be without any merit, dismissed. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/rsh/

Annexures referred to by the applicant in OA No.889/2019

- Annexure-A1: Copy of the impugned letter dated 1.7.2019
Annexure-A2: Copy of the Establishment Order dated 29.06.2017
Annexure-A3: Copy of the clarificatory letter dated 2.8.2016
Annexure-A4: Copy of the instruction for convening DPC by letter dated 23.2.2017
Annexure-A5: Copy of the instructions dated 23.3.2017
Annexure-A6: Copy of the representation submitted by Association on 5.7.2019
Annexure-A7: Copy of the letter dated 2.1.2017 of Chandigarh Zone
Annexure-A8: Copy of the judgment reported in (2013) 9 SCR 593