

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 667 of 2016

Reserved on: 20.11.2019

Date of order: OA.Q.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Nepal Chandra Das,
Son of late Pandab Chandra Das,
Aged about 56 years,
Working as Senior Tax Assistant,
Office of the Commissioner of Central Excise,
Kolkata-IV Commissionerate, Vigilance Branch,
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata - 700 001,
Residing at 23/1, Bansdroni Ambagan,
P.O. Bansdroni,
P.S. Regent Park,
24-Pgs. (S), Pin : 700 070.
2. Kartik Chandra Haldar,
Son of late Prafulla Kumar Haldar,
Aged about 56 years,
Working as Senior Tax Assistant,
Office of the Commissioner of Central Excise,
Kolkata - V Commissionerate,
Kus Bhawan, 180, Shantipally,
Rajdanga Main Road,
Kolkata - 700 107,
Residing at Vill. Dighirpar,
P.O. Jadavpur Hat,
South 24-Parganas, Pin : 743 336.
3. Rabindra Nath Sarkar,
Son of late Rasendra Nath Sarkar,
Aged about 56 years,
Working as Senior Tax Assistant,
Office of the Assistant Commissioner of
Central Excise & Service Tax,
Siliguri Division, 35, Sarat Bose Road,
P.O. Siliguri Hakim Para,
Dist. Darjeeling, Pin : 734 001,
Residing at Dabgram-1, Pritilata Road,
Balaka More, Ward No. 23,
P.O. Rabindra Sarani,
Dist. Darjeeling, W.B., Pin : 734 006.
4. Nilima Sarkar,
Wife of Rabindra Nath Sarkar,
Aged about 55 years,
Working as Senior Tax Assistant,
Office of the Commissioner,

h.s.b



Central Excise & Service Tax,
 Siliguri Commissionerate,
 Haren Mukherjee Road, Hakim Para,
 P.O. Siliguri,
 Dist. Darjeeling, Pin : 734 001,
 Residing at Dabgram-1, Pritilata Road,
 Balaka More, Ward No. 23,
 P.O. Rabindra Sarani,
 Dist. Darjeeling, W.B., Pin : 734 006.

5. Sukumar Das,
 Son of late Kokan Das,
 Aged about 56 years,
 Working as Senior Tax Assistant,
 Office of the Assistant Commissioner,
 Dinhata Customs Division,
 Coach Bihar, Sunity Road,
 P.O. & Dist. Coach Bihar,
 Pin : 736101,
 Residing at Central Excise Residential
 Quarter No. G- 14 near Sagar Dighi, Sunity Road,
 P.O. & Dist. Coach Bihar, Pin : 736 101.
6. Haradhan Bhattacharya,
 Son of late Bhola Nath Bhattacharya,
 Aged about 58 years,
 Working as Senior Tax Assistant,
 Office of the Assistant Commissioner
 Of Central Excise, Berhampore Divn.,
 26/23, Sahid Surya Sen Road,
 Berhampore, Murshidabad,
 Pin 742 101,
 Residing at 89, Kathmapara,
 P.O. Khagra,
 Dist. Murshidabad, Pin : 742 103.
7. Dilip Kumar Dey,
 Son of Makhanlal Dey,
 Aged about 54 years,
 Working as Senior Tax Assistant,
 Office of the Commissioner of Central Excise,
 Kolkata – III Commissionerate,
 Export Refund Branch, 180, Shantipally,
 Rajdanga Main Road,
 Kolkata – 700 107,
 Residing at Subhasgram Natun Pally,
 P.O. Subhasgram,
 Dist. South 24-Pgs.,
 Kolkata – 700 147.
8. Swapan Das,
 Son of late Sukumar Das,
 Aged about 56 years,
 Working as Senior Tax Assistant,
 Office of the Central Excise, Vo. II Commissionerate,
 Audit Branch, 15/1, Strand Road, M.S. Building,



W.R.B.

Kolkata - 700 001,
 Residing at 175, J.C. Khan Road (Jhillpark),
 P.O. Mankund,
 Dist. Hooghly.

9. Haradhan Sharma,
 Son of late Sasticharan Sharma,
 Aged about 59 years,
 Working as Senior Tax Assistant,
 Office of the Commissioner of Central Excise,
 Kolkata-II Commissionerate, GL Branch,
 M.S. Building, Custom House, 15/1, Strand Road,
 Kolkata - 700 001,
 Residing at Vill. Balibhara (Brickfield),
 P.O. Nabanagar,
 Dist. North 24-Pgs., Pin : 743 136.

10. Ashis Kumar Das,
 Son of late Tarapada Das,
 Aged about 58 years,
 Working as Senior Tax Assistant,
 Office of the Commissioner of Central Excise,
 Kolkata-II Commissionerate, Custom House,
 M.S. Building, 15/1, Strand Road,
 Kolkata - 700 001,
 Residing at 42/A, Raja Ramchand Ghat Road,
 P.O. Panihati,
 P.S. Khardah,
 Dist. North 24-pgs., Pin : 700 114.

11. Joy Chand Naskar
 Son of late Paresh Ch. Naskar,
 Aged about 58 years,
 Working as Senior Tax Assistant,
 Office of the Commissioner of Central Excise,
 Khardah Division, Kolkata-III Commissionerate,
 4, Brabourne Road,
 Kolkata - 700 001,
 Residing at P.O. & Vill. Bhandardah,
 Dist. Howrah, P. S. Domjur,
 Pin : 711 411.

12. Swapan Kumar Majumder,
 Son of late Sunil Chandra Majumder,
 Aged about 58 years,
 Working as Senior Tax Assistant,
 Office of the Commissioner of Central Excise,
 Haldia Commissionerate, 25, Princep Street,
 Kolkata - 700 072,
 Residing at Pioneerpark, Lichutola Barasat,
 P.O. & P.S. Barasat,
 Dist. North 24-Pgs.,
 Kolkata - 700 124.

13. Barun Kumar Das,
 Son of Surendranath Das,



beli

Aged about 58 years,
 Working as Senior Tax Assistant,
 Office of the Commissioner of Central Excise,
 Kolkata-V Commissionerate, K.U.S. Bhawan,
 180, Shanti Pally, Rajdanga Main Road,
 Kolkata - 700 107,
 Residing at 27/1, B.C. Pramanick Road, Budge
 Budge,
 Kolkata - 700 137.

..... Applicants.

Versus

1. Union of India
 through the Secretary,
 to the Govt. of India,
 Ministry of Finance,
 Department of Revenue,
 North Block,
 New Delhi - 110 001.
2. The Chairman,
 Central Board of Excise & Customs,
 North Block,
 New Delhi - 110 001.
3. The Manager (P&V),
 Central Board of Excise & Customs,
 Ministry of Finance,
 Department of Revenue,
 North Block,
 New Delhi - 110 001.
4. The Chief Commissioner of Central Excise,
 K.U.S. Bhawan, 1st Floor, 180, Shanti Pally,
 Rajdanga Main Road,
 Kolkata - 700 107.
5. The Commissioner of Central Excise,
 Kolkata-II, Custom House,
 M.S. Building, 15/1, Strand Road,
 Kolkata - 700 001.
6. Shri Jayanta Kumar Mukherjee,
 Inspector, Kolkata-III Commissionerate,
 4, Brabourne Road,
 Kolkata - 700 001.
7. Shri Monoj Sarkar,
 Inspector,
 Kolkata-IV Commissionerate,
 Custom House, 15/1, Strand Road,
 Kolkata - 700 001.
8. Shri Sudip Das,



hsl

Inspector,
 Kolkata-V Commissionerate,
 K.U.S. Bhawan, 180, Shanti Pally,
 Rajdanga Main Road,
 Kolkata - 700 107.

9. Shri Sujit Kumar Maitra,
 Inspector,
 Kolkata-I Commissionerate,
 K.U.S. Bhawan, 180, Shanti Pally,
 Rajdanga Main Road,
 Kolkata - 700 107.
10. Shri Prasanta Kumar Ghosh,
 Inspector,
 Service Tax-II, K.U.S. Bhawan,
 180, Shanti Pally,
 Rajdanga Main Road,
 Kolkata - 700 107.
11. Shri Benu Dey,
 Inspector,
 Kolkata-I Commissionerate,
 M.S. Building, Custom House,
 15/1, Strand Road,
 Kolkata - 700 001.
12. Shri Sukumar Ghosh,
 Inspector,
 Kolkata-II Commissionerate,
 M.S. Building, Custom House,
 15/1, Strand Road,
 Kolkata - 700 001.
13. Shri Subrata Nandi,
 Inspector,
 Kolkata-III Commissionerate,
 M.S. Building, Custom House,
 15/1, Strand Road,
 Kolkata - 700 001.
14. Shri Sukumar Kundu,
 Inspector,
 Kolkata-II Commissionerate,
 Custom House,
 15/1, Strand Road,
 Kolkata - 700 001.
15. Shri Jayanta Pal Chowdhury,
 Inspector,
 Kolkata-II Commissionerate,
 Custom House, M.S. Building,
 15/1, Strand Road,
 Kolkata - 700 001.
16. Shri Prasanta Kumar Baliar,

hah



Inspector,
 Commissioner of Customs (Preventive),
 West Bengal, Custom House,
 15/1, Strand Road,
 Kolkata – 700 001.

..... Respondents.

For the Applicants : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. S. Paul, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicants have approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunals (Procedure) Rules, 1987 to move this application jointly.

(b) An order holding that promotions made to the grade of Inspector without considering the case of the applicants for promotion to the grade of Inspector after granting necessary age relaxation inspite of their passing of Departmental Examination for promotion to the grade of Inspector is arbitrary and unlawful.

(c) An order directing the respondent authorities to review the promotions made to the grade of Inspector after passing of the Departmental Examination for promotion to the grade of Inspector by the applicants and further directing the respondent authorities in particular the Respondent Nos. 2 & 3 to consider the case of the applicants for promotion to the grade of Inspector after granting age relaxation.

(d) An order directing the respondent authorities to grant to the applicants all consequential benefits on their promotion to the grade of Inspector in reference to the promotions granted to their erstwhile juniors after passing of the Departmental Examination for promotion to the grade of Inspector by the applicants.

(e) An order directing the respondents to produce/cause production of all relevant records.

(f) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard both ld. Counsel, examined pleadings, documents on record and considered the rival contentions. Written notes of arguments have been filed by both Ld. Counsel.

3. The applicants have prayed for liberty to jointly pursue this matter on grounds of common interest and common cause of action. Upon being

(Signature)



satisfied that the applicants share common interest and are pursuing a common cause of action, the said prayer is allowed under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987.

4. Ld. Counsel for the applicant would submit that the applicants were initially appointed in Central Excise as Sepoys. They qualified in the departmental examination for promotion to LDC in 1992. The respondent authorities, however, misinterpreted certain provisions in the Rules. There were other latches on the part of the respondents due to which the applicants were denied promotion at the relevant point of time despite their entitlement.

The applicants were granted such promotion as LDC/Tax Assistant in the year 2009 with retrospective effect from 2002. This deprived the applicants of opportunities to appear in the concerned departmental examinations for promotion to the grade of Inspector as they were debarred by overage. It is only after they had crossed 50 years that they were given opportunities to appear in the said departmental examination which is a pre-requisite for promotion to the grade of Inspector. Actual promotion was, however, denied to them on grounds of overage.

Although the applicants requested the respondent authorities for age relaxation, respondent authorities did not consider such prayer, but, on the other hand, promoted their juniors from Srl. Nos. 171 to 246 in the cadre of STAs as Inspectors and, hence, being aggrieved with the discriminatory action on the part of the respondent authorities, the applicants have approached the Tribunal.

The applicants would advance, inter alia, the following grounds in support of their claim, namely,

- (a) The respondent authorities' action in denying the applicants promotion to the post of Inspector are arbitrary and unjustified.

ref

(b) That, the applicants were entitled to age relaxation and further promotion thereon. Hence, denial of their prayer for age relaxation is neither a bonafide nor a lawful action of the respondent authorities.

5. The respondents, per contra, would argue as follows:-

(a) That, as per para 4(3) of the Recruitment Rules, 2003, in the illustrative case of the applicant No. 1 of the instant O.A., the applicant had passed the computer proficiency test on 11.12.2009, and, was, accordingly, promoted in the grade of Tax Assistant w.e.f. 11.12.2009 and, hence, the question of his promotion to the grade of Tax Assistant prior to 11.12.2009 does not arise given that he had qualified for the computer proficiency test only on 11.12.2009.

(b) That, the applicants have raised their claims after the lapse of nearly seven years. As the applicants had appeared in the departmental examination for promotion in the year of January, 2011, they were aware that the upper age limit as per recruitment rules was 50 years for such promotion. The applicants, however, did not agitate this issue or pray for such age relaxation either in the year 2009 (when the restructuring orders were issued) or in 2011, when they had reportedly appeared for the DPC after crossing the age bar of 50 years. The applicants have also failed to agitate that they had not been promoted to the post of LDC during 1993 to 2008 and also when notional effect was granted to them with effect from 2002.

(c) The respondents would also refer to the provisions of the recruitment rules of Inspector, 2002, particularly, Clause 12 of the same, as under:-



[Signature]

"Clause 12

(a) By selection from those candidates working in the following restructured cadres;

- (i) Tax Assistant with 2 years service as Tax Assistant or 5 years service as Tax Assistant and Upper Division Clerk put together.
- (ii) Upper Division Clerk or stenographer Grade III with 5 years service.
- (iii) Upper Division Clerk with 13 years of total service as Upper Division Clerk and Lower Division Clerk taken together subject to the condition that they should have put in a minimum of 2 years service in the grade of Upper Division Clerk.
- (iv) Stenographer Grade II with 2 years service.
- (v) Stenographer Grade II or Stenographer Grade III with 12 years service as Stenographer or Upper Division Clerk and Lower Division Clerk, if any, taken together subject to condition that they have completed a minimum of 2 years service as Stenographer Grade II or Upper Division Clerk.
- (vi) Women searcher with 7 years of service in the grade.
- (vii) Draftsman with 7 years of service in the grade.

(b) By selection from those candidates working in the following restructured cadre:

- (i) Senior Tax Assistant with 2 years regular service in the grade.
- (ii) Stenographer Grade II with 2 years regular service in the grade.
- (iii) Women searcher with 7 years of service in the grade.
- (iv) Draftsman with 7 years of service in the grade.

(c) Failing the method of Recruitment specified under clause (b) above, by selection from those candidates working as Tax Assistant and Stenographer Grade III having not less than 10 years of service including the service to be included for the purpose under the provisions of this rules regulating the method of Recruitment to the post of Tax Assistant.



Note-1: Promotion under clause (a) above shall be only operative for a period of two years from the date on which the restructured cadres mentioned under clause (b) above comes into existence.

The service rendered under the new grade in the restructured cadres shall be counted towards considering the eligibility for promotion under clause (a) above.

Note-2: Candidates shall be required to pass such written test as may be determined by the Central Board of Excise and Customs from time to time. The maximum age of eligibility for the departmental candidates shall be 45 years which shall be relaxable to 47 years in the case of candidates belonging to the Scheduled Castes or the Scheduled Tribes category. However, those of the officials who were not considered for such promotion upto the age of 45 to 47 years, as the case may be, shall be granted the benefit of relaxation in age limit upto 50 years in order to enable a fair opportunity of a minimum of two chances. However, those of the officials who were considered for promotion upto the age of 45 to 47 years, as the case may be, on two or more occasions and were not found fit for promotion shall not be eligible for this relaxation.

Note-3: Candidates shall be required to pass physical tests and confirm the physical standards as specified in column 3.

Note-4: The eligible officers under clause (a), (b) and (c) above shall be required to pass through an interview before promotion.

Note-5: Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less and have successfully completed their probation period for promotion to the next higher grade alongside their juniors who have already completed such qualifying or eligibility service."

hsl

The respondents would highlight that the provisions of the recruitment rules were abundantly clear in that the maximum age limit was upto 50 years in order to enable a fair opportunity of a maximum of two chances to candidates to qualify in the written test.

(d) The respondents would contend that, the applicants were aware that the provisions in Note 2 of Clause 12 of the said recruitment rules could be prejudicial in the context of their becoming overaged, but they had failed to challenge the recruitment rules, particularly, the upper limit on age as contained therein. The applicants had also not raised any apprehension at the material point of time either with the authorities or in any judicial forum that they would be debarred from appearing at the examination due to age bar.

(e) The respondents would further argue that the Board's instructions dated 3.11.2014, as communicated by their letter dated 4.8.2016, had also clarified that, if the candidate had qualified in the written examination within the age limit prescribed, there would be no further age limit for granting promotion to the post of Inspector. Hence, if the applicants had qualified in the DPC within the age limit, there would be no bar to promoting them in the post of Inspectors.

(f) The respondents would also argue that the status of the private respondents is not identical with that of the applicants and, hence, the scope of discrimination as alleged does not arise.

(g) The respondents would particularly cite the case of applicant No. 6, Shri Haradhan Bhattacharya, who had participated in the examinations dated 30.9.2010, proving thereby that the



hth

applicant's eligibility of STA arose only in 2011 consequent to his qualifying in the departmental examination. Hence, his claim that he became eligible to participate in the examination only in 2011, falls through.

6. During hearing, Ld. Counsel for the applicant would highlight that a similarly placed Tax Assistant, who had also superannuated, was promoted notionally to the grade of Inspector of Central Excise with the Grade Pay of Rs. 4600/- in compliance to the directions of the Chandigarh Bench of this Tribunal dated 9.1.2014 in O.A. No. 903-HR of 2013, upheld by the Hon'ble High Court of Punjab & Haryana, Chandigarh in CWP No. 6423/2014 (O&M) dated 17.11.2014 and accepted by the Board vide its letter dated 17.6.2015 (Annexure A-16 to the O.A.), Ld. Counsel for the applicant would also painstakingly draw the attention of the Tribunal on the findings in O.A. No. 903-HR of 2013 in which the Tribunal had arrived at the following conclusion:-



“ Thus, it is quite clear that the Board has already taken a decision that there is no reason to debar an individual from being promoted as Inspector at any point of time in service, once the requisite examination has been cleared by the candidate and the Board, therefore, does not favour imposition of age-limit cap for promotion to the post of Inspector.

Admittedly, the applicant has passed the requisite departmental examination for promotion to the grade of Inspector and he is otherwise eligible as per the Recruitment Rules disregarding the bar of age-limit. The Recruitment Rules for the post of Inspector are proposed to be amended, but, as per the extant RRS, the applicant in the instant O.A. cannot be considered for promotion in the grade of Inspector as he did not pass the Departmental Examination before completion of 50 years of age.

Strictly speaking, the present applicant's case for promotion is not covered under the existing Recruitment Rules. However, it may be noted that the Board is of the view that the Recruitment Rules be amended to exclude the criterion of maximum age-limit for appearing in the Departmental Examination for promotion to the grade of Inspector. Therefore, it is technical to deny, promotion to the applicant merely on the ground of he being overage, the will of the Board it to do away with the requirement of maximum age restriction and give the benefit of promotion. The respondents may also grant promotion to the applicant, by invoking the power to relax, the extant Recruitment Rules, as contained rule 6 of the RRs. If it is found feasible to invoke the power to relax in age of the individual applicant, the respondents may consider invoking the said power for a class, including the applicant and similarly situated. Thus we are of the view that the impugned order (Annexure A-1 to the O.A.) is liable to be quashed and set aside being arbitrary.

[Handwritten signature/initials]

In the light of above discussion, the instant Original Application is allowed. The impugned order (Annexure A-1) is quashed and set aside. The respondents are directed to consider the case of the applicant for promotion to the grade of Inspector from the due date as have been given to his juniors w.e.f. 15.05.2013 with all consequential benefits. This exercise must be concluded within a period of 45 days from the date of receipt of a certified copy of this order.

No order as to costs."

Ld. Counsel for the applicant would also submit, that, while upholding the same, the Hon'ble High Court of Punjab & Haryana at Chandigarh had observed as follows:-

"15. We are thus of the view that the second respondent has made out a case of invoking power of relaxation under Rule 6 of the Recruitment Rules and the direction issued by the Tribunal may be read to mean that in the peculiar facts and circumstances, the competent authority ought to have firstly invoked its power to grant relaxation in age limit to respondent No. 2 and then consider him for promotion as Inspector with effect from the date his junior were promoted.

16. There is yet another reason which persuades us to uphold the order passed by the Tribunal. The second respondent has meanwhile retired from service on attaining the age of superannuation. He qualified the written test at the earliest opportunity. He also qualified the physical test and but for the age embargo, he was entitled to be promoted as Inspector. Once relaxation is granted and respondent No.2 gets promoted, it would benefit him towards his retiral benefits including pension.

17. For the reasons assigned above, we decline to interfere in the order passed by the Learned Tribunal and dismiss the writ petition."

7. Ld. Counsel for the respondents would argue that the applicants are fence sitters, who had not approached the respondent authorities at the material point of time to challenge the recruitment rules or to represent to the respondent authorities requesting for invocation of power to relax as incorporated in Rule 6 of the recruitment rules of 2002 (Annexure A-7 to the O.A.). The said Rule 6 reads as follows:-

"6. Power to relax. – Where the Central Government is of the opinion that is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

Hence, their claim at this belated stage and, particularly, after superannuation, is not justified.

hph

7. We have carefully considered the rival contentions and, we find that in the case of Shri S.C. Sanghi, who was also a Sr. Tax Assistant and had superannuated, both the Tribunal and the Hon'ble High Court had considered the fact that he had qualified in the promotional examination and it is only his overage that had denied him the opportunities of promotion at the material point of time. Hence, both the Tribunal and the Hon'ble High Court directed the respondent authorities to grant such promotion upon relaxation of age limit.

Ld. Counsel for the applicant would submit that the applicants' cause of action arose only after supersession by their juniors against which the applicants had represented. As the representations were ignored while the respondents issued their orders on 31.3.2016, the applicants approached the Tribunal. Further, the applicants could rightfully approach the Tribunal once they came to learn that a similarly circumstanced employee had received a favourable decision from the judicial forum, subsequently implemented by the respondent authorities.

Most of the applicants, being superannuated ex-employees, would receive revised pensionary benefits if their claim succeeds. This, being a continued cause of action, we do not consider the applicant's prayers as barred by limitation.

Further, in the absence of respondents' averments to the contrary, we are *prima facie* of the considered view, that the applicants are similarly circumstanced as that of Shri Sanghi, the applicant in O.A. No. 903-HR of 2013.

8. Accordingly, we would direct the respondent No. 2 who is the Chairman, Central Board of Excise & Customs, North Block, New Delhi to consider the representations of the applicants at Annexure A-13 colly. to the O.A. and to examine whether the applicants in this O.A. are

W.H.J.



similarly circumstanced as that of the applicant in O.A. No. No. 903-HR of 2013, decide in accordance with law and issue a reasoned and speaking order conveying his decision to the applicants within 16 weeks of the date of receipt of a copy of this order.

In case of any favourable decision, consequent benefits should be released to the applicants within a further period of 8 weeks therefrom.

9. The O.A. is disposed of with the above directions. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

