

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH  
HYDERABAD**

**OA/020/0615/2019**

**Reserved on: 12.04.2021  
Pronounced on : 30.04.2021**



**Hon'ble Mr. Ashish Kalia, Judl. Member  
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

Shaik Jamil Ahmed, S/o. Shaik Munir Ahmed,  
Aged 51 years, Occ: Inspector of Central Excise &  
Customs (Group B Non-Gazetted),  
O/o. The Deputy Commissioner of Central Excise & CGST,  
Kadapa Division, Opp. District Court4, RTC Road,  
Kadapa, AP – 516 001.

...Applicant

(By Advocate: Mr. KRKV Prasad)

Vs.

1. Union of India, Rep. by the Secretary,  
Government of India,  
Ministry of Finance, Department of Revenue,  
North Block, New Delhi – 110001.
2. The Chairman,  
Central Board of Indirect Tax and Customs,  
North Block, New Delhi – 110001.
3. The Principal Commissioner,  
Central Excise, Hyderabad GST Commissionerate,  
(Cadre Controlling Authority),  
GST Bhavan, Basheerbagh, Hyderabad.
4. The Chief Commissioner of CGST & Customs,  
Visakhapatnam Zone, GST Bhavan, Port Area,  
Visakhapatnam – 530 035.
5. The Commissioner of CGST,  
Tirupati Commissionerate,  
No. 9/86, West Church Complex,  
MR Palli Road, Tirupati, AP.
6. The Deputy Commissioner of CGST,  
Kadapa Division, Opp. District Court, RTC Road,  
Kadapa, AP – 516 001.

....Respondents

(By Advocate: Mrs. L. Pranathi Reddy, Addl. CGSC)

**ORDER**  
**(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)**

**Through Video Conferencing:**

2. The OA is filed in regard to promotion of the applicant as Superintendent in the respondent organization.
3. Applicant working as Inspector in the respondents organization since 20.03.2007 (later, the date of promotion was revised to 20.05.2004) claims that he is eligible to be promoted as Superintendent in the year 2018, but the respondents did not consider him on the ground that he has not passed the departmental examination as per Exam Rules 2008. Further, respondents ordered recovery from pay and allowances and stoppage of increment pertaining to the post of Inspector held by the applicant since 2007. Aggrieved, the OA is filed.
4. The contentions of the applicant are that he was promoted as Inspector initially w.e.f. 02.03.2007 and latter it was revised with retrospective effect from 20.05.2004 in the panel year 2004-05, as per Recruitment Rules, 2002 vide order dt. 25.03.2017. The Departmental Examination (Central Excise & Customs) Rules, 2008 (for short "***Exam Rules, 2008***) were notified on 12.12.2008 prescribing departmental exam for Inspector cadre, while making it clear that the Exam Rules, 2008 will come into force from date of notification in the official gazette. Applicant was promoted as Inspector in 2007/ notionally from 2004 and therefore, the Exam Rules, 2008 would not apply to his case. Applicant has passed the departmental exam meant for promoting Ministerial officer to the grade of



Inspector of Central Excise as per the result declared on 18.08.2005 and secured qualifying marks in Paper I, II & III. Applicant is entitled to be promoted as Superintendent on adhoc basis w.e.f. 08.08.2018 on par with his juniors who was promoted vide Establishment order dt. 10.08.2018.



Applicant was not considered since he has not cleared Paper IV (Law) & VI (Viva-voce) as per Exam Rules 2008. However, applicant was called to appear for Paper VI (Viva-voce) in April, 2007, but not for Paper IV (Law).

Applicant represented to permit to appear in Paper IV in the exam held on 05.12.2018 by Tirupati Commissionerate, which was not only declined, but over and above, order dt. 30.04.2019 was issued informing the applicant that necessary recovery from pay will be effected for failure to pass the departmental examination as per Rule 5(2) of Exam Rules 2008.

Increments were granted by the respondents after verifying the service record and that the applicant has not misrepresented for drawl of the same.

Applicant is physically challenged and he is subjected to loss of promotion and pay by the illegal and arbitrary decisions of the respondents after allowing him to work as Inspector for 12 ½ years. The Delhi Zone of respondent organization has promoted Inspectors as Superintendents vide order dt. 31.12.2018 subject to passing of the departmental exam.

5. Respondents while confirming the career particulars of the applicant state that as per clauses 5, 6 & 7 of Exam Rules 2008, an officer has to appear and clear the departmental exam within the number of chances granted in order to be confirmed in the cadre in which he is working, lest he would be reverted to the lower post if he is a promote. Adhoc promotions to the cadre of Superintendent were considered based on Tribunal order dt.

30.07.2018 in OA No. 1225/2016 and 148 eligible Inspectors were promoted, but not the applicant & some others since they have not cleared Paper IV/ VI of the departmental exam. When the applicant requested to allow him to appear in Paper IV in the exam held by Tirupati Commissionerate, it was informed that the CBEC Board is the competent authority to grant permission and that as per Rule 5(2) recovery of pay and allowances will be effected vide letter dt. 12.02.2019. Applicant sought exemption from the CBEC Board on 18.02.2019 which was rejected vide letter dt. 09.05.2019. However, based on the interim order of the Tribunal dt. 16.07.2019, no recovery is being effected from the pay and allowances of the applicant. Though the applicant has been promoted on 23.02.2007 and the exam rules were notified in 2008, the applicant has not cleared the departmental exam within 2 years of promotion to Inspector cadre as per Rule 5 & 7 of exam rules, 2008. The retrospective promotion to the applicant w.e.f. 20.05.2004 was issued on 25.03.2017 after the exam rules were framed. Applicant is free to appear in the departmental exam and no one is called to appear in the exam and that similarly placed officers who were promoted on 23.02.2017 appeared in the exam. Applicant has admitted that he has appeared in Paper VI in April 2007 exam, which would mean that the applicant is aware that he has to clear paper IV too. Though immediate action was not taken against the applicant for not clearing the departmental examination, but yet granting any relief to the applicant would act as a bad precedent. Without passing the departmental exam for Inspector, applicant is not eligible for promotion to Superintendent cadre.



Applicant filed a rejoinder stating that the contention of the respondents that though the applicant was promoted in 2007, he has not cleared the departmental exam within 2 years of promotion, shall apply not only to the applicant, but to others as well who were promoted. Applicant referred to orders of the different Benches of this Tribunal to claim that the juniors to the applicant were promoted under RR 1979 by relaxing the departmental exam norms, but the same was not extended to him. Albeit applicant sought permission to appear in the exam it was not allowed but Sri V. Bhahmaji Rao who was promoted as Inspector in 2009 was allowed to appear in the exam in March 2020. Applicant was granted promotion with retrospective effect w.e.f. 20.05.2004 vide order dt. 25.03.2017 and therefore exam rules 2008 do not apply to him. Applicant claims that he was eligible to be promoted as Inspector based on qualifying in the exam meant for ministerial cadre. The contentions of the respondents that similarly placed officers were not considered for promotion for failing the departmental exam would not apply to the applicant. While applicant cleared the viva-voce exam on being called to appear, there was no requirement to clear paper IV. Applicant was confirmed in the cadre of Inspector and therefore, raising the question of not passing the departmental exam does not arise. CBEC Board has wrongly rejected the request for exemption of the departmental exam. Four Inspectors in Delhi zone were promoted as Superintendents in 2018 subject to passing of the exam on a later date. APARs of the applicant has the grading of very good.

Respondents filed a sur-rejoinder wherein they state that the contentions of the applicant that other officers who have not cleared the





departmental exam were allowed to retain the promotion is incorrect, since for rejecting similar request Sri BCK Raju & ors, filed OA 1071/2018, which is pending adjudication. Hon'ble Apex Court held in Civil Appeal Nos.1970-1975 that the service as DEO Gr. B has to be considered w.e.f. 20.01.2003, the date on which the STA Rules were framed, for the purpose of promotion to Inspector cadre and therefore, the applicant cannot claim promotion on 06.12.2002 under 1979 Rules. Law paper (Paper -IV) was not introduced only in exam rules 2008 and that as per rule 5 of the exam rules 1998, an officer who has been promoted to higher grade after passing a part of the departmental examination has to clear the remaining papers. Further, as per Rule 7 of the Exam Rules, 1979, ministerial cadre officials who have passed the test prescribed for ministerial cadre promoted to executive grade, shall have to clear paper IV (law) and paper VI (viva-voce) within one year of promotion to the executive grade. Respondents cited Board letter dt. 18.08.2004 & RRs 2002 of Inspector to support their contentions. Shri V. Bhahmaji Rao was also not considered for promotion as he has not cleared Paper IV and mere passing the exam without permission of competent authority will not confer any right for promotion. Applicant was granted notional promotion w.e.f. 20.05.2004, but to retain the promotion, he has to pass the departmental exam. Clearing of Paper IV & VI is a condition which is in vogue since 1998 and there is no exception to the rule. 4 Inspectors namely Sri B. Dharma Rao, Sri P.L.N. Raju, Sri V.Brahmaji Rao and Sri Ch. Chandrasekhar were not considered for promotion as Superintendent for not clearing the departmental exam. Clause 7(1)(b) of the exam rules 2008 issued on 20.12.2008 also states that Ministerial cadre officials who passed the departmental test prescribed for

promotion as Inspector shall have to clear Papers IV, VI within one year of the said promotion. Applicant chose not to appear in Paper IV of departmental exam. Respondents filed letter dt.26.03.2021, wherein it was stated that 4 Inspectors of Delhi zone were promoted as Superintendents in different circumstances and that they were given one chance to appear in the departmental exam for confirmation as Inspector.



6. Heard both the counsel and perused the pleadings on record.

7(1) The dispute is about not considering the applicant for promotion as Superintendent on the ground that he has not cleared the prescribed departmental exam. Applicant claims that exam rules 2008 clearly state that they are applicable from the date of publication in the official gazette i.e. 12.12.2008. As the applicant was promoted as Inspector in 2007, Exam Rules 2008 would not apply to him. However, we observe that the Exam Rules 1998 have made it clear that the ministerial cadre officials who have passed the prescribed departmental test for promotion as Inspector, shall have to clear Papers IV & VI within one year of promotion to the Inspector/Executive cadre. Applicant did clear Papers I, II, III in 2005, but not papers IV & VI. Hence, the contentions of the applicant that he need not appear in Papers IV & VI would not hold good in the light of instructions contained in exam rules 1998, which apply to his case since he was promoted regularly and notionally prior to exam rules 2008 were notified.

(II) It is also interesting to note that the applicant has appeared in paper VI in April 2007 exam. The applicant is from the executive cadre and therefore, his contention that he was not called upon to appear in paper IV is not reasonable. For departmental examination, employees appear in their

own interest and they are not called upon to appear. Other similarly situated employees have appeared in the papers cited and therefore, applicant can be no exception to the same. In fact, Sri B.C.K. Raju and others have filed OA 1071/2018 on the issue which is pending adjudication.



(III) However, respondents claiming that they have followed uniform yardstick of insisting on passing the departmental exam to be promoted as Superintendent is not borne by facts since the 4 Inspectors of Delhi Zone were promoted as Superintendent by giving them one chance, as admitted vide their letter dt. 26.03.2021. Further, they have also stated that 4 inspectors namely Sri B. Dharma Rao and others were not promoted as Superintendent for not clearing the departmental exam, but they were silent as to whether any recovery has been ordered from their salary as was done in the case of the applicant. It was also not stated as to whether the officers referred to were reverted/ appointments cancelled as per relevant exam rules.

(IV) It is also not clear from the sur-rejoinder as to how Sri V. Brahmaji Rao was allowed to appear in the departmental exam without permission of the competent authority. Respondents claiming that the said officer failed in Paper IV and hence, was not promoted is not of relevance, but what is relevant is as to why he was allowed to appear in the exam and not the applicant. Further, the contention of the applicant that he was confirmed in Inspector cadre was not refuted in the reply statement. It was not explained as to how he was confirmed without clearing the departmental exam.

V. Applicant is seeking an opportunity to appear in paper IV exam, as was pleaded by the learned counsel for the applicant. Respondents having given such an opportunity to 4 Delhi Zone officers and to Sri V. Brahmaji Rao, while denying the same to the applicant, would tantamount to discrimination, which is violative of Article 14 of the Constitution. However, we do not agree with the averment of the applicant that since his juniors were promoted as Superintendents, he has to be promoted, for the reason that he has to clear the mandatory departmental examination prescribed under exam rules 1979 and the same proviso was carried over to exam rules, 2008.



VI. Nevertheless, there could be similar cases of the nature on hand, in the respondents organization and therefore, a holistic view has to be taken by the CBEC as a policy issue to grant one time relaxation to all those who cannot be retained in the inspector cadre for not clearing the departmental exam. Particularly, when similarly situated employees were given such an opportunity as was referred to in paras supra and in view of the silence of the respondents in regard to recovery of pay and allowances to Sri Dharma Rao & Ors. Granting permission to some and not to others is not permitted under law. The fact that the applicant worked as Inspector for more than 12½ years need also to be kept in view.

VII. Hence, in view of the aforesaid, we direct the 2<sup>nd</sup> respondent to place the issue before the CBEC Board for examining the aspect of giving one time relaxation to all those Inspectors who would like to appear in Paper IV/VI pan-India to be retained in the inspector cadre and thereafter, on

clearing the relevant papers, to be in the reckoning for promotion to the cadre of Superintendent including the applicant, and take a well informed decision. The decision taken shall be communicated to all those concerned by issuing a speaking and reasoned order. Time allowed to implement the judgment is six months since all India data need to be collected to take a view for granting the relaxation referred to. Till the decision is taken, the interim order dated 16.07.2019 would hold good. In case the decision of the Board is not in favour of the applicant, it is made clear that there shall be no recovery from the pay and allowances of the applicant, till the date the applicant has been allowed to discharge the responsibilities of Inspector.

VIII. With the above direction, the OA is disposed of, with no order as to costs. MAs stand disposed.

**(B.V.SUDHAKAR)**  
**ADMINISTRATIVE MEMBER**      **(ASHISH KALIA)**  
**JUDICIAL MEMBER**

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