

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:: HYDERABAD**

OA/020/01384/2014

**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 Jameel Ahmed, S/o. Shaik Munir Ahmed,
Aged 46 years, Occ: Inspector of Central Excise,
O/o. The Superintendent, Customs & Central Excise,
Nandalur Range, Kadapa Division, Kadapa,
R/o. H. No. 13/149 B.K.M. Street, Kadaepa – 516 001, AP.

...Applicant

(By Advocate : Mr. KRKV Prasad)

Vs.

1. Union of India, Rep. by the Secretary,
Government of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi.
2. The Chairman, Central Board of Excise & Customs,
North Block, New Delhi.
3. The Chief Commissioner,
Central Excise Customs & Service Tax,
Hyderabad Zone, 1st Floor, CRB,
Basheerbagh, Hyderabad.
4. The Commissioner, Central Excise Customs & Service Tax,
Hyderabad II Commissionerate,
CRB Basheerbagh, Hyderabad.
5. The Commissioner, Central Excise Customs & Service Tax,
Hyderabad I Commissionerate,
CRB Basheerbagh, Hyderabad.
6. R.V.S. Gopinath, Occ: Superintendent of Customs & Central Excise,
O/o. The Commissioner, Hyderabad Zone, Hyderabad.
7. I. Manmadha Rao,
Occ: Superintendent of Customs & Central Excise,
O/o. The Commissioner, Visakhapatnam Zone, Visakhapatnam.

....Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

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

Through Video Conferencing:

2. The applicant filed the OA for his promotion as Inspector of Customs & Central Excise w.e.f. 07.12.2002 with consequential benefits including fixation of his seniority above the unofficial respondents against quota meant for PH candidates and consider his promotion as Superintendent w.e.f. 29.10.2014.

3. Applicant who is physically challenged, presently working as Inspector of Central Excise, was promoted as Data Entry Operator (for short “**DEO**”) Grade ‘B’ w.e.f. 2.5.2000 from the post of Data Entry Operator Gr. ‘A’, vide letter dt. 14.11.2005. Although the applicant was promoted as DEO ‘B’ on 2.5.2000, he was treated as Senior Tax Assistant (for short “**STA**”) from 16.02.2003, after the post of DEO grade B was redesignated as STA under cadre restructuring from the said date. Consequently, private respondents were shown as senior to the applicant. Thereafter, in regard to promotion as Inspector, applicant earlier filed OA 1370/2011 before this Tribunal, which was disposed on 5.9.2013, with a direction to the respondents to consider the relief sought by the applicant. Respondents rejected the request vide their letters dt. 17.12.2013/ 18.09.2014. Besides, seniority list was issued on 29.10.2014 in the cadre of Inspector, wherein the private respondents were shown senior to the applicant. Aggrieved, in regard to the above, the OA is filed.

4. The contentions of the applicant are that the other physically Challenged employees working as Tax Assistants, UDC (Spl Pay) were given the benefit of STA w.e.f. 2002 as per Rule 5 of STA Recruitment Rules, whereas applicant was discriminated by not granting promotion as STA, w.e.f. 2.5.2000. Applicant relied on letters of the CBEC Board dt.04.10.2004, 26.09.2005, 5.8.2005, 23.5.2006 and Rule 5(i) of STA Recruitment Rules to further his cause. The service rendered before commencement of the STA Rules should be taken into account for further promotion to the next higher grade. By considering the applicant promotion to STA as deemed to have been granted from 2.5.2000, the next promotion as Inspector shall have to be effected from 7.12.2002. The juniors to the applicant Sri R.V.S. Gopinath & Sri I. Manmadha Rao, respondents 6 & 7, in the erstwhile STA cadre were placed above the applicant based on new Recruitment Rules designating DEO Grade 'B' as STA. As a result, private respondents were granted earlier promotion to Inspector cadre as PWD (Persons with Disability) candidates and placed senior even in the Inspector cadre and for promotion to Superintendent cadre as well. Sections 33, 47 & 72 of PWD Act have been violated and without rectifying the seniority of the applicant, respondents went ahead and conducted the DPC for Superintendent cadre on 30.09.2014. Thus, the action of the respondents, in not treating the applicant in the cadre of STA from 01.05.2000 instead of 16.03.2003 resulting in loss of seniority, delayed promotion as Inspector with associated consequences like not being in the zone of consideration for Superintendent, etc, is illegal, arbitrary and discriminative.



5. Respondents per contra state that the applicant was recruited as DEO (Grade A) on 10.11.1993 and promoted as DEO Gr. B w.e.f. 02.05.2000, vide order dt. 14.11.2005, on par with his junior Sri B. Srinivasa Rao in the pay scale of Rs.4500-7000 (Pre-revised). Due to cadre restructuring in the respondents' organization, the posts of Assistant & DEO (Grade C) as well as Tax Assistants/ DEO Grade B were re-designated as STA with the proviso that the latter category shall rank enbloc junior to the former category since their pay scales were lower than the former cadre. As per Rule 5(1) of RRs for STA, which were promulgated on 20.01.2003 and came into effect from 16.02.2003, the services rendered in the cadre of Tax Assistant/ DEO (Gr. B)/ UDC shall be deemed to have been considered for promotion to the cadre of STA. Applicant is not eligible to be promoted as per RR 2002 of Inspector cadre, notified on 7.12.2002. The post of STA came into existence w.e.f. 20.01.2003. As per Board's directions read with Hon'ble High Court of Andhra Pradesh direction dated 02.03.2005 in WP No. 7963/2004, vacancies in Inspector cadre up to 6.12.2002 have to be filled up as per Recruitment rules (for short RRs) 1979 of Inspectors & later vacancies with RR of 2002. DEO cadre was not the feeder cadre for Inspector grade under RR 1979. Sri R.V.S. Gopinath & Sri I. Manmadha Rao were in the grade of Tax Assistants/UDC and hence, were considered for promotion of Inspectors with retrospective effect, unlike the applicant who belongs to the DEO Grade. Applicant's several representations were disposed as per rules. The contention of the applicant in regard to the order of the learned Court of CCPWD, dt. 20.03.2007 in Case No. 3279/2006 is incorrect. In OA 1370/2011, the direction of this Tribunal was for disposal of representation of the applicant dt. 03.05.2011, which was complied with



on 17.12.2013 by rejecting the request through a speaking order, by stating the applicant was promoted to Inspector cadre in 2005-06 as per RR-2002. Based on the Ministry of Social Justice and Empowerment Notification dt. 31.05.2001, six vacancies of Inspector cadre arising prior to 06.12.2002 were allotted to PH category under RR 1979. Accordingly, Sri RVS Gopinath & Sri I. Manmadha Rao, the private respondents, who were Physically challenged (orthopedic disability), were promoted by conducting review DPC on 10.01.2007, whereas the applicant became eligible for promotion under the new RR 2002 which came into effect w.e.f. 16.02.2003. As per DOPT memo dt. 29.12.2005, reserved vacancies can be carried forward up to next 3 subsequent years. Seniority list of the Sr. Tax Assistants was drawn up as per RR 2002. There being no eligible candidates in 2003-04 & 2004-05 to fill up the 4 PH vacancies, they were carried forward. In 2005-06, applicant who stood at Sl. No. 28 in the seniority list, was considered and promoted against PH vacancy in 2005-06 as per RR 2002. The private respondents were promoted as Inspector as per RR 1979 and hence, are senior to the applicant in the Inspector cadre. Therefore, they were considered and promoted as Superintendent on 29.10.2004. Applicant has not raised any objection in regard to the draft seniority list of the Inspectors. As per DOPT Memo dt. 10.04.1989, promotions are given with prospective effect.

Applicant has filed a rejoinder wherein he claims that as per RR 2003 of STA, he should be treated as STA from 02.05.2000 and that as per rule 5(iv) of the Rules, UDC with special pay i.e. Sri RVS Gopinath was placed



below the applicant in the seniority list of STA. Hence, since junior was promoted, applicant has to be promoted as Inspector as well as Superintendent cadre on par with the junior.



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

7(I) The issue is about grant of promotion to the cadre of Inspector. Facts of the case reveal that the applicant joined as DEO Gr. A in 1993 and was promoted as DEO Gr. B on 02.05.2000. Respondents have undertaken restructuring of various cadres in the respondent organization and in the process, created the STA (Senior Tax Assistant) cadre on 16.02.2003, by merging Assistant & DEO Gr. C cadre with pay scale of Rs.5000-8000 as well as Tax Assistant and DEO Gr. B in pay scale of Rs.4500-7000 with the proviso that later category will rank enbloc junior to the former category. RRs (for short "**Recruitment Rules**") for STA were framed on 20.01.2003 which came into effect from 16.02.2003. The claim of the applicant is that his seniority in STA cadre has to be reckoned from 02.05.2000 based on Rule 5 of RRs 2003 of STA, which is reproduced hereunder:

“5. Initial Constitution:-

(i) All the persons appointed on the regular basis at the time of commencement of these rules to the Grade of Assistant, Tax Assistant, Upper Division Clerk (Special Pay), Data Entry Operator Grade “B” and “C” shall be deemed to have been appointed as Senior Tax Assistants under these rules. The service rendered by them before commencement of these rules shall be taken into account for deciding the eligibility for promotion to the next higher grade.

(ii) Assistants (Rs.5000-8000) and Data Entry Operator Grade ‘C’ (Rs.5000-8000) are being re-designated as Senior Tax Assistants in the same scale of pay. Therefore, the Assistants and Date Entry Operator Grade ‘C’ shall be placed enbloc senior to the other categories. However, their inter-se placement shall be done according to the date from which they had actually be appointed to

these grades on regular basis subject to the condition that their inter se placement in their respective category shall not be altered.

(iii) The Date Entry Operator Grade 'B' (4500-7000) and the Tax Assistants (4500-7000) have been placed in their higher scale of 5000-8000 and they shall be placed below the Assistant and Data Entry Operator Grade C and their inter se placement shall be fixed in accordance with the date of regular appointment to the respective grade subject to the condition that their inter se placement in respective category shall not be disturbed.

(iv) Upper Division Clerk with special pay shall be placed below Assistant; Data Entry Operator Grade 'C', Data Entry Operator Grade 'B', Tax Assistants."



True, the service rendered as DEO Grade B has to be considered for promotion to the next higher cadre of Inspector. However, the RRs of Inspectors were revised on 07.12.2002, with the following provisions:

"the officers working in the following cadre only are eligible for promotion to the cadre of Inspector:

- (i) Senior Tax Assistant with 2 years service;*
- (ii) The services rendered in the pre-restructured cadre of Tax Assistant/ Steno Grade II/ UDC (Special Pay) only shall be considered as qualifying service for promotion to the cadre of Inspector."*

Clause (ii) above does not include the cadre of DEO Gr. B for considering the service rendered in this cadre for promotion as Inspector and as per clause (i), the applicant has to render 2 years service, which would mean that he would be eligible for promotion in 2005-2006. Accordingly, when 4 vacancies in PH category were available in 2005-2006, applicant was promoted as Inspector, by the respondents. The claim of the applicant that since he was promoted as DEO Gr. B in 2000 and hence, considering the length of service rendered in this cadre from 2000 can be reckoned for promotion as inspector, is not in congruence with the provisions laid down in RR 2002 of Inspector.

(II) In regard to promotion of the Juniors Sri R.V.S. Gopinath and Sri I. Manmadha Rao, they worked as UDC/Tax Assistants and the respondents abiding by the OM dated 31.05.2001 of the Ministry of Social Justice and Empowerment, has identified 6 vacancies in the Inspector cadre for PH category for the years prior to 06.12.2002. Hon'ble High Court of Andhra Pradesh in WP No. 2378/2005 dated 2.3.2005 relied upon by the applicant, has directed that as per RRs of Inspectors existing prior to 07.12.2002 shall be applied in filling up Inspectors vacancies up to 06.12.2002 and for later vacancies by applying RR 2002. Consequently, respondents invoked 1979 RR of Inspectors grade and promoted Sri RVS Gopinath and Sri I. Manmadha Rao against 6 PH vacancies available in 2002-03 by holding a review DPC on 10.01.2007. Even as per clause (ii) of the latest RRs of 2002, private respondents are eligible to be promoted to the grade of Inspector cited supra. At this juncture, it is also pertinent to mention that DEO Gr. B was not the feeder cadre for Inspector cadre under 1979 RRs of Inspectors. The DEO Gr. B became a feeder cadre for the post of Inspector only when the new RR 2002 of Inspector came into effect on 07.12.2002. Hence, the applicant cannot compare himself with the Physically challenged officers Sri RVS Gopinath and Sri I. Manmadha Rao since they belong to UDC/ Tax Assistant cadre whereas the applicants belongs to DEO Gr. B cadre.

III. The other contentions of the applicant as made out in the rejoinder that since he is senior to Sri RVS Gopinath as per seniority list of STA would not hold ground, since primarily the DEO Gr. B was not the feeder

cadre for promotion to Inspector grade as per 1979 RRs of Inspector. Therefore, without being in the feeder cadre for Inspector, applicant claiming the promotion to the cadre of Inspector does not have substance. The question of senior-junior will arise only when the applicant is eligible to be promoted which is not the case in respect of the applicant.



IV. In respect of the contention of the applicant about improper implementation of the order of the court of the CCPWD, we find that it does not hold good, since the complaint before the CCPWD in Case No. 3279/2006 was regarding conduct of physical Endurance Test (PET) for promotion to Inspector cadre/ Payment of arrears from deemed date of promotion and the Hon'ble CCPWD Court has observed on 20.03.2007 that respondents allowed promotion without PET and that no arrears need to be paid as per FR 27. Coming to OA 1370/2011, the Tribunal has not gone into the merits of the case, but only directed disposal of the representation of the applicant, which the respondents complied on 17.12.2013. Representations made by the applicant were replied by the respondents as per the details given in the reply statement, which were not refuted by the applicant in his rejoinder. Even in regard to the seniority list of Inspectors issued on 26.08.2014, no objection was raised by the applicant as contended by the respondents and not rebutted by the applicant in his rejoinder. The private respondents who were promoted earlier to the Inspector cadre, rank senior to the applicant in the said cadre and hence, were promoted to Superintendent cadre on 29.10.2014 as per their eligibility. Other contentions with regard to CBEC letters, zone of

consideration of Superintendent cadre, etc. raised by the applicant were also gone through and found them not relevant enough to deal with.



V. Above all, respondents submitted judgment of the Hon'ble Supreme in ***D. Raghu & Others v. R. Basaveswarudu & Others etc.*** in Civil Appeal No.1970-1975 of 2009 with Civil Appeal Nos. 1976 of 2009 dt. 05.02.2020, while the case was being heard, which is supportive of the contentions of the respondents. The relevant portion is extracted hereunder:

RELIEF IN CIVIL APPEAL NOS. 1970-1975 OF 2009

120. *Civil Appeals Nos. 1970-1975 of 2009 are disposed of as follows:*

The restructured cadre of Senior Tax Assistants came into force on 20.01.2003. Appellants are not entitled to have seniority determined in respect of vacancies of Inspector which arose prior to 07.12.2002. The appellants are eligible to be considered for promotion from 20.01.2003 and they are entitled to add their service as Data Entry Operator Grade 'B' for the purpose of the 2002 Inspector Rules and considered for vacancies to be filled by promotion, which arose after 07.12.2002. The persons in Clause (a) under Column 12 of the 2002 Rules, are also entitled to be considered for two years from 20.01.2003. Seniority is to be considered based on Rule 5 of the STA Rules. The exercise, as above, if not carried out already shall be carried out. Further promotions based on the above will be granted. However, we direct that the promotions shall be notional where promotions have already been effected, however, entitling the parties to seniority and pensionary benefits. The above exercise shall be completed at the earliest.

VI. Therefore, from the above, it is evident that the applicant cannot seek the relief of being treated as STA from 02.05.2000. Respondents have followed the relevant rules and latest law in promoting the applicant to the cadre of Inspector in the year he was eligible and the allied seniority list

was framed in congruence with the prevailing norms. Hence, there being no merit in the OA, we dismiss it with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

evr

(ASHISH KALIA)
JUDICIAL MEMBER