

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 6th day of October, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 926 of 2003

1. Piyush Kumar, aged about 34 years, son of Sri Om Prakash Resident of Type-II, Qr.No.2, Custom Colony, Gujaini, Kanpur, presently posted as Data Entry Operator, Gr.-B.
2. Sharad Tiwari, aged about 34 years, son of Sri P.S. Tiwari, R/O 87/358, Acharya Nagar, Kanpur, presently posted as Data Entry Operator, Group-B.
3. Vinay Kumar Nigam, a/a 34 years, son of Sri P.R. Nigam, R/O 37/7, Vishnupuri Colony, Kanpur, presently posted as Data Entry Operator, Group-B.
4. Sanjay Kumar Saxena, a/a 34 years, son of Late K.B. Saxena, resident of D-46 Gujaini, Kanpur, presently posted as Data Entry Operator, Group-B.
5. Amarjeet Singh, a/a 34 years, son of Sri G.B. Singh, R/O M1-172 Double Storey, Hemant Bihar, Barra-II, Kanpur presently posted as Data Entry Operator, Group-B.
6. Arvind Kumar Negi, a/a 32 years, son of Sri Matbar Singh Negi, R/O 71/9, Vijay Nagar, Kanpur, presently posted as Data Entry Operator, Group-B.
7. Gopalji Shukla, a/a 33 years, son of Sri T.N. Shukla, R/O G-31, Income-Tax Colony, Wazir Hasan Road, Lucknow
8. Vivek Mishra, a/a 28 years, son of Sri M.S. Mishra, R/O Type-III, 67, Central Excise Colony, Gujaini Kanpur, presently posted as Data Entry Operator, Group-B.

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.....Applicants.

Counsel for applicants : Sri S. Mukherjee.

Versus

1. Union of India through the Secretary, Ministry of Finance Department of Revenue, North Block, New Delhi.
2. The Central Board of Excise and Customs, North Block, New Delhi through its Chairman.

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3. The Chief Commissioner, Tulsi Ganga Meenar Vidhan Sabha Marg, Lucknow.
4. The Commissioner, Central Excise Commissionerate, 38, M.G. Marg, Allahabad.

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.....Respondents.

Counsel for respondents : Sri G.R. Gupta.

ORDER (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri S. Mukherjee, learned counsel for applicant, Sri G.R. Gupta, learned counsel for respondents and perused the pleadings.

2. The O.A. on hand has been instituted for issuance of the following reliefs :-

- "1) To quash/set aside the order dated August 2003 (Annexure-A-1).
- 2) To issue a mandamus declaring Schedule Item-12 (a)(i), (ii), (iii) as arbitrary and discriminatory or in the alternative to struck down item-12(b)(i) to the extent 'with two years regular service in the grade' as arbitrary, discriminatory and violative of Article 14 & 16 of the Constitution. And/or to declare Item-12 clause (a) of the Schedule of Notification dated 29.11.2002, Gazette dated 7.12.2002 as inoperative in view of notification dated 16.1.2003 (Gazette dated 20.1.2003).
- 3) To issue a mandamus directing the respondents to consider promotion to the post of Inspector, Central Excise from the cadre of Senior Tax Assistants, preparing seniority list in accordance with the Notification dated 16.1.2003, Gazette dated 20.1.2003 and after holding departmental examination necessary for promotion to the post of Inspector, Central Excise, so that all persons included in the Cadre of Senior Tax Assistants become eligible and get opportunity and a right of consideration for promotion to the said post.
- 4) To issue any other order or direction as this Hon. Tribunal may deem fit and proper in the circumstances of the case.
- 5) To award costs throughout to the applicants.

R.S.

3. Counsel for the applicants states at bar that the relief quashing the order dated August, 2003 (Annexure A-1) is not pressed and O.A. in that regard may be dismissed. The only contention raised by the counsel is that the applicants, who were considered for promotion from the post of Senior Tax Assistants to the post of Inspectors, Central Excise earlier in the year 2002 and their matter has been kept in sealed cover. It is submitted that the controversy raised here ⁱⁿ stands concluded in view of the recent decision of the Bombay High Court in writ petition No.6957/03 Smt. S.S. Dongre & others decided on 17.10.2003, S.L.P. preferred against which came to be dismissed by the Supreme Court on 9.2.2004, and thereafter it is submitted by the counsel that Govt. of India, Ministry of Finance, Department of Revenue Central Board of Excise and Customs, issued Notification No.F.No.C-18013/25/2004.AD.III.B, New Delhi dated 4.10.2004 and, therefore, the respondents are bound to ~~consider to~~ open the sealed cover and promote the applicants after they are found fit as per recommendations made by the Departmental Promotion Committee.

4. Having heard counsel for the parties, we are of the view that this O.A. can be disposed of with a direction to the Competent Authority, namely, the Chief Commissioner, Lucknow (Respondent No.3), ~~who shall~~ ^{to} look into the matter in the light of the decision of the Bombay High Court and the circular referred to above and take appropriate decision according to law within a period of one month from the date of receipt of a copy of this order. ~~The OA is disposed of accordingly.~~

No order as to costs.

A.M.

V.C.

Asthana/