

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO.266 of 2006
Jodhpur, this the 24th day of September, 2008**

**CORAM:HON'BLE MR.K.V.SACHIDANANDAN, VC(J)
HON'BLE MR.TARSEM LAL, MEMBER(A)**

Gulab Singh Khichi s/o Shri Fateh Singh Khichi, by caste Khichi, aged about 54 years, r/o near Doosri Pole, Charno Ki Gali, Mahamandir, Jodhpur, presently working as Dy. Office Superintendent in the Office of Deputy Commissioner, Central Excise Division, C-1-A, Panchawati Colony, Ratanada, Jodhpur.

...APPLICANT

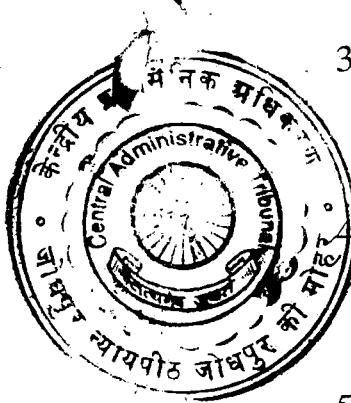
BY ADVOCATE: SHRI MANOJ BHANDARI

VERSUS

1. Union of India, through the Secretary, Ministry of Finance, Department of Central Excise, North Block, New Delhi.
2. The Chief Commissioner, Central Excise Department (JZ), New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005
3. The Commissioner, Central Excise Commissionerate, Jaipur-I, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005

The Additional Commissioner (P&V), Central Excise Commissionerate, Jaipur-I, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur-302005

5. The Dy. Commissioner, Central Excise Division, C-1-A, Panchawati Colony, Ratanada, Jodhpur.



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6. Shri Mahaveer Prasad, presently working as Inspector, Central Excise Division, Chittorgarh.

... RESPONDENTS

BY ADVOCATE: **SHRI MAHENDRA GODRA**, holding brief of **SHRI VINEET KUMAR MATHUR**, Counsel for respondents.

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, VC(J):-

The applicant was, initially, appointed in the respondent department Central Excise as U.D.C. in March 1992. He was promoted as a Tax Assistant in December 1995, in the pay scale of Rs.4500-8000, as per Annexure A-1. For next promotion to the post of Inspector, a combined seniority list is prepared from amongst the feeder cadres of Tax Assistants and Stenographers Gr.II and a separate seniority list is also prepared amongst the Tax Assistants, as well as Stenographers Gr.II. It has been clarified that for selection to the posts of Inspector, the zone of consideration prescribed is that for more than five vacancies, twice the number of vacancies plus four persons shall be called from the General Category and five times of the number of vacancies shall be called from the SC/ ST candidates. The promotions are required to be made by holding a D.P.C. of the persons who become eligible on 1st of April every year, as per circulars of the Department of Personnel dated 22.4.1992 and 19.5.1992.



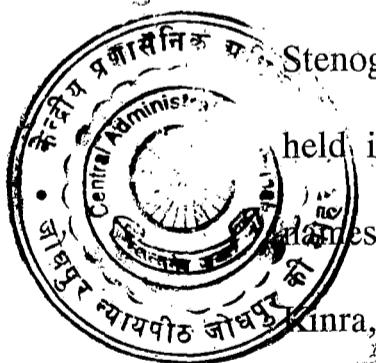
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2. Applicant pleads that his name was shown at Sr.No.24 of the separate seniority list prepared for the Tax Assistants. His date of birth being 5.2.1953, he was eligible to be considered for promotion against vacancies for the year 1997-98 because the crucial date for reckoning the age limit for promotion is 1st January of the year in which the DPC is held as laid down in Circular dated 7th December, 1987, issued by the Central Board of Excise & Customs (C.B.E.C.), placed at Annexure A-3.

Applicant further pleads that promotions to the posts of Inspector were held on 21st of January, 1998 as the D.P.C. was held on the said date to fill up the vacancies for the year 1997. Twenty-six persons were called to appear in the interview. The said meeting of the DPC was, however, cancelled and on 12th March, 1998, names were again called for promotion to the post of Inspector from amongst the Tax Assistants and Stenographers Gr.II. This time, the DPC was to be held on 19th March, 1998. In this DPC, 26 persons were called from amongst Tax Assistants/

Stenographer Gr.II and three persons were promoted. A review DPC was held in July 1998 in which 33 persons were called, which included names of three persons i.e. S/Shri Naresh Kumar, Abhey Singh & Rajesh Kinra, who were junior to him. He was superseded by all these junior persons, vide order dated 26.8.1998, Annexure A-5.



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3. Applicant made a representation which was replied to by the respondents contending that since he had completed more than 45 years of age as on the date of the DPC, therefore, he cannot be promoted. He again made a representation contending that he became 45 years of age in February 1998 itself and as per instructions of the C.B.E.C., he was eligible to be considered for promotion against vacancies for the year 1997-1998 because the crucial date of reckoning the maximum age limit is 1st of January of the year in which the DPC is held. Applicant also served a notice of demand but without any response. Aggrieved by this action of the respondents, he has filed the present O.A. seeking the following reliefs that:-

i)Appropriate orders/ directions be issued to the respondents to consider the case of the applicant for promotion to the post of Inspector w.e.f. 26.8.1998, with all consequential benefits;

ii)Appropriate orders/ directions be given to respondents to hold a Review DPC to consider his case for promotion to the post of Inspector w.e.f. the date his juniors have been granted promotion i.e. 26.8.1998; and,

in the alternative,

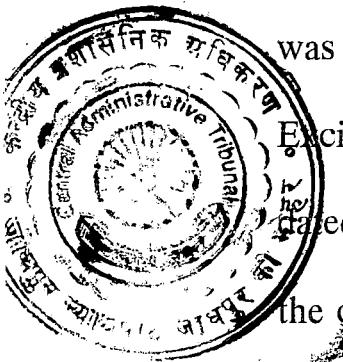
iii)Promotions granted to juniors of the applicant may be modified to the extent that applicant is granted promotion and is empanelled from the said date on the post of Inspector with all consequential benefits; and

iv)Any other appropriate order or direction be given which the Tribunal may deem fit, just and proper in the facts and circumstances of the case.



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4. Respondents have filed a detailed Written Statement contending that D.P.C. for promotion to the grade of Inspector, Customs & Central Excise, was held on 18/19.3.1998 and 3.7.1998 for filling up 11 vacancies for the panel/ vacancy year 1997-98. The said D.P.C. was reviewed on 6.8.1998 and further reviewed on 8.9.1998, 20.8.1999 and 8.11.2001. While conducting the said review D.P.C., dated 6.8.1998 for the panel/ vacancy year 1997-98, a fresh select panel of 18 candidates was also prepared for filling up 18 vacancies for the panel/ vacancy year 1998-1999 by the impugned D.P.C. dated 6.8.1998. The said select panel of 18 candidates, prepared for the year 1998-99, was revised by the Review D.P.C. held on 20.8.1999 and, subsequently, revised by the review D.P.C. held on 21.7.2000 and, accordingly, the selected candidates were promoted to the grade of Inspector. The posts of Inspector were filled up by promotion on the basis of 'Selection Method' from amongst U.D.Cs/ Stenographers Gr.III with 5 years' regular service, Stenographers Gr. II with two years' service and Draftsmen with 7 years' service in the grade. The normal zone of consideration for selection posts was twice the number of vacancies plus four. As per Central Board of Excise & Customs Circular No.185/89, issued under Ministry's letter dated 23.8.1999 and forwarded under D.O.P.T's O.M. dated 19.7.1989, the crucial dates for determining the eligibility of officers for promotion were: (i) Ist July of the year in cases where A.C.Rs are written calendar



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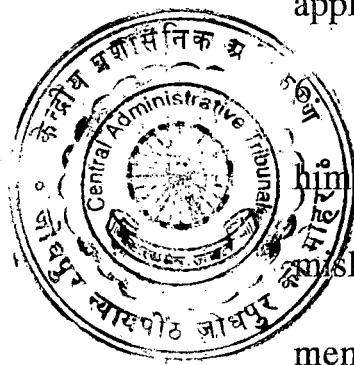
year-wise; and (ii) 1st October of the year where A.C.Rs are written Financial Year-wise. It was further stated therein that the crucial dates, as indicated above, would be applicable to only such services and posts for which statutory rules do not prescribe a crucial date. The A.C.Rs of employees of the respondent office are written Financial Year-wise, therefore, the crucial date for determining the eligibility for promotion was 1st October of the year. Prior to the Financial Year 1999-2000, no time schedule was fixed for convening D.P.Cs and granting promotions to higher grades. The Board had earlier decided that the crucial date for reckoning the maximum age limit be modified to 1st January of the year in which the D.P.C. is held. However, later on, the C.B.E.C., vide circular dated 23.8.1999, ordered the crucial dates for determining the eligibility of officers for promotion, as stated above. Accordingly, the crucial date for determining the eligibility for promotion was taken as 1st of October of the year. Hence, 1st October, 1997 and 1998 were taken as the crucial dates for determining the eligibility conditions viz. qualifying service, age limit etc. of the candidates for their consideration for promotion.

With regard to the contention of the applicant made in the O.A. that he was ignored for promotion to the post of Inspector against vacancies for the years 1997-1998, it is contended by the respondents that he was figuring beyond the prescribed consideration zone of 26



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candidates empanelled for 11 vacancies. The panels were prepared by determining the eligibility of the candidates under the extant rules/circulars and no juniors to the applicant were promoted against vacancies of Inspector for the years 1997-98. It is further contended by the respondents that so-called juniors to the applicant were not considered for promotion to the grade of Inspector against the vacancies for the panel/vacancy year 1997-98, rather, they were considered for promotion to the grade of Inspector against 18 vacancies for the panel/vacancy year 1998-99 for which the crucial date for determining the eligibility of candidates was 1st October, 1998 in terms of D.O.P.T.'s Office Memorandum dated 19.7.1989. Since the applicant, whose date of birth is 5.2.1953 had completed the prescribed maximum age of 45 years on 5.2.1998 i.e. prior to said crucial date i.e. 1st October, 1998, therefore, being age barred, he was not considered for promotion to the grade of Inspector against the vacancies by the D.P.C. held on 6.8.1998 for the panel/vacancy year 1998-1999. On these pleadings respondents have contended that the applicant has no case and the O.A. deserves to be dismissed.



Applicant has filed a rejoinder reiterating the contentions made by him in the O.A. It is further contended that respondents are trying to mislead the Court by misstatement of material facts because the memorandum dated 19th July, 1989 prescribing the crucial date for determining the eligibility of the officers for promotion for some period

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of service i.e. the requisite minimum period of service is required to be considered for promotion to the post of Inspector in a Feeder Cadre. The D.P.C. should be convened every year on a fixed date i.e. 1st April or May and the department should lay down a fixed time schedule for holding the D.P.C.s. He was eligible for promotion for vacancy year 1997-1998, as conducted by the respondents, and whatever be the reasons, was not promoted even when the review D.P.C. was held.

7. Respondents have filed an additional affidavit contradicting the averments made by the applicant in the rejoinder and have contended that when an employee does not fulfill the required conditions for promotion, his claim for promotion can not subsist. Respondent No.6 and the other candidates who were below the age of 45 years and fulfilled all other terms and conditions as on 1.10.1998 i.e. the crucial date for determining eligibility for promotion, as prescribed, were considered and promoted to the grade of Inspector. They cannot be equated with the applicant. The O.A. has no merit and deserves to be dismissed.

8. We have heard Shri Manoj Bhandari, Id. Counsel for the applicant and Shri Mahendra Godra, Advocate, holding brief of Shri Vineet Kumar Mathur, appearing on behalf of the respondents. We have also given our due thought and consideration to the pleadings, documents and the material on record.



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9. Ld. Counsel for the applicant argued that the criteria, as has been prescribed by the Board, has not been followed at the time of holding the D.P.Cs and the Review D.P.C. The applicant was eligible to be considered for promotion, which was not done in this case. The Ld. Counsel for respondents, on the other side, argued that since the applicant was not fulfilling the required conditions, his name for promotion was not considered as per the rules. We have also given our due thought and consideration to the rival arguments addressed on both sides.

10. It is an admitted fact that applicant was shown in the combined seniority list of Tax Assistants, dated 31.12.1997, and his name figured at Sr.No.24 therein. Respondents have, virtually, admitted in the reply statement that the applicant was eligible to be considered for promotion to the post of Inspector and he would have come within the zone of consideration but for he had not been overage. Ld. Counsel on both sides graciously agreed that as per the Recruitment Rules, no body should be considered who is over-age. Now, the question to be considered by this Court is that when the D.P.C was held for the promotional post of Inspector from the feeder categories in the seniority list, could the applicant be considered since his date of birth, as shown in the seniority list was 5.2.1953 and particularly when he, admittedly, was otherwise qualified on the basis of other criteria, such as qualifications, the number



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of years of service rendered, A.C.R. dossiers etc. Only his age was found to be over and, therefore, he was not put in the zone of consideration.

11. Id. Counsel for the applicant drew our attention to the circular, Annexure A-3 of the C.B.E.C., dated 7.12.1987, which is reproduced hereunder for ready reference:-

“Promotion – Crucial date for reckoning the age limit for further promotion – regarding.

According to instructions contained in Board’s letter F.No.1/4/62-Ad.III-A dated the 18th January, 1963 the crucial date for reckoning the age limit for promotion is 1st July of the year in which the Departmental Promotion Committee meets. Now that the Departmental Promotion Committees are generally expected to be held in the months of February/ March every year, it has been decided by the Board that the crucial date for reckoning the maximum age limit be modified to 1st January of the year in which the DPC is held.

2. These instructions shall take effect from 1st January, 1988. The select panels already drawn in accordance with the existing instructions need not be reopened.”

The Id. Counsel argued that applicant’s age should have been taken as on 1st January of the year in which the D.P.C. was held. The respondents have, however, contended that the crucial dates for determining the eligibility of officers for promotion are: (i) 1st July of the year in cases where ACRs are written calendar year-wies; and (ii) 1st October of the year where ACRs are written Financial year-wise. It has further contended that the crucial dates, as indicated above, would be applicable



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to only such services and posts for which statutory rules do not prescribe a crucial date. The ACRs of employees of the respondent office are written Financial Year-wise, therefore, the crucial date for determining the eligibility for promotion was 1st October of the year. In view of this, the applicant could not be considered.

12. In view of the above controversy, the crux point to be decided is whether, as per the rules, the applicant could be considered for promotion, or not. Respondents have contended that the memorandum dated 19th July, 1989 prescribed the crucial date for determining the eligibility of officers for promotion to service i.e. requisite minimum period of service is required to be considered for promotion to the post of Inspector in a feeder cadre. It is, however, contended on behalf of the applicant that it is five years in the case of Tax Assistants. In determining these five years, the crucial date is laid down as per the said memorandum, as produced by the respondents, which prescribes that in the case where ACRs are written Financial Year wise, 1st October of the year shall be the date on which the person should have completed five years of service in the year in which he is to be promoted. As on 1st October, he had completed five years of service on the feeder post. The applicant already completed five years of service in March 1997 and if the eligibility date has to be seen, he completes five years even prior to October 1997 or October 1998 which can be the crucial date for



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vacancies for the year 1997-1998 for being promoted to the higher post of Inspector. The contention of the respondents is that prior to the Financial Year 1999-2000 there was no time schedule to convene D.P.C. However, it is settled law and also provided under the rules and the circulars issued by the Govt. of India from time to time that even prior to the said date the D.P.Cs were required to be convened every year on fixed dates i.e. 1st April or May, and the departments were required to lay down a time schedule for holding the D.P.Cs, as has been clarified by letter dated 10.4.1989. For better elucidation, Paras 3.1 and 3.2 of the said circular are reproduced below:-

“3.1 The D.P.Cs should be convened at regular annual intervals to draw panels which would be utilized on making promotion against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, integrity certificates seniority list etc. for placing before the DPCs could be convened every year if necessary on a fixed date e.g. 1st April or May. The Ministries/ Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/ amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to recruitment rules normally have only prospective application, the existing vacancies should be filled as per the recruitment rules in force.



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3.2 The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

In other words, the applicant is canvassing for a position that if a right thing had been done at the right time, he could have been promoted to the post of Inspector.

13. The respondents have relied upon a decision of the Hon'ble Supreme Court in the case reported in **CC.A. 4294 of 1997-98 SCC (L&S) 1562** and canvassed that where non-promotion of an employee is not arbitrary or deliberate, no relief can be given by the Court. However, the peculiar facts of the present case are that a wrong has been committed by the respondents and, for this, it cannot be said that applicant has not been put to any prejudice and hardship. Even the last chance of promotion has been denied to the applicant. Therefore, in the crucial facts and circumstances of the present case, the decision cited by the respondents does not apply and is distinguishable to the facts of the present case.

14. Further case of the applicant is that his juniors have been promoted, whereas, he has been denied the promotion. The Hon'ble Supreme Court in the case reported in **1992 Supp.(2) SCC 172**, titled

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RAILWAY, BANGALORE, in the facts that appellants had not yet been promoted while juniors to them already stood promoted and respondents had contended that juniors had been promoted for justifiable reasons, had held that whatever might be the reason, superseded appellants had a genuine grievance. The Tribunal had refused to dispose of the dispute on merits, solely on the ground of delay and it was held that despite delay, the matter required investigation and disposal of the case on merits, afresh. Thus, the matter was remanded to the Tribunal for a fresh decision. Therefore, the contention that the matter is delayed and, therefore, the applicant cannot agitate the same at this point of time, also does not hold good.

15. Considering the entire issue involved in this case and holding that the applicant had already completed the requisite qualifying service in October 1997 itself when the D.P.C. was held in 1998, the crucial time limit for age consideration that of 45 years should have been taken as per the circular dated 7.12.1987 and the crucial date of reckoning the maximum age limit be hence modified to 1st January of the year in which the DPC is held, should have been followed in this case which has not been done like that in this case and the applicant has been deprived of his legitimate right of being considered for promotion to the post of Inspector for which he is still suffering despite the fact that respondents have had



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for which he is still suffering despite the fact that respondents have had many review/ revised D.P.Cs.

16. Therefore, we are of the considered view that the applicant has made out a case and, accordingly, we direct the respondents to convene a review D.P.C. and consider the case of the applicant for promotion to the post of Inspector w.e.f. the date from which his immediate junior was promoted against vacancies for the years 1997-1998 and to grant him all the benefits of such promotion, if he is found otherwise fit, notionally. He shall be entitled for monetary benefits from the date he holds higher responsibilities of the post of Inspector.

17. This O.A. is allowed in terms of observations and directions, given above. The parties are left to bear their own costs.

Kareem Lal

(TARSEM LAL)
MEMBER(A)

K.V.SACHIDANANDAN
(K.V.SACHIDANANDAN)
VICE CHAIRMAN(J)

Dated: September 24th, 2008

bss'

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for Mr. Manoj Bhadoria

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