

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.131/2006

Jodhpur, this the 21st day of January, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, JUDICIAL MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

1. Pradeep Singh Panwar (STA), s/o Shri Achal Singh Panwar, aged about 37 years, by caste Rajput, resident of Near Mahalaxmi School, Inside Jaloring Gate, Jodhpur, presently working as STA, Customs and Central Excise Department, Jodhpur.
2. Rajesh Deora (TA) s/o Shri Banshi Lal Ji Deora, aged about 36 years, by caste, Ganchi, r/o Near Lahalaxmi School, Inside Jalori Gate, Jodhpur, presently working as TA, Customs and Central Excise Department, Jodhpur.
3. Sanjay Saini (TA) s/o Shri S.R.Saini, aged about 36 years, by caste Mali, r/o 241, Kamla Nehru Colony, Jodhpur, presently working as TA, Customs and Central Excise Department, Jodhpur.
4. Gajendra Sharma (TA) s/o Shri Mangi Lal Ji Sharma, aged about 36 years, by caste Jangid, r/o G-1-196, shastri Nagar, Jodhpur, presently working as Ta, Customs and Central Excise Department, Jodhpur.

.....Applicants

By Advocate : Mr. Aditya Singhvi proxy for Mr. Manoj Bhandari

Vs.

1. Union of India through the Secretary to the Government, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi.
2. Chief Commissioner, Central Excise Department, Jaipur Zone, Jaipur, New Central Revenue Building, Statue Circle, Rajasthan, Jaipur.

3. Additional Commissioner (P&V), Central Excise, Jaipur-I, New Central Revenue Building, Statue Circle, Jaipur
4. Shri Hemant Kumar Jain, Adhoc Inspector, Central Excise Division, Udaipur.
5. Shri Ramsharan Gurjar, Steno Grade II, P.A. to Commissioner Customs, Jaipur, Statue Circle, Jaipur

...Respondents

By Advocate : Mr. Mahendra Prajapat, proxy counsel for Mr. Ravi Bhansali for resp. No. 1 to 3)

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

By way of this OA the applicants seek to challenge the impugned order dated 17.5.2006 whereby all Commissioners are directed to hold DPC/Review DPC for the posts of Inspectors and the order dated 6.7.2006 whereby the respondents are holding review DPC meeting for promotion to the grade of Inspector and further issued a list of candidates and directed to attend the physical test and interview to be held on 11-12.7.2006.

2. Facts in brief, as stated by the applicants, are that the applicants were initially appointed as Data Entry Operator and presently working as Tax Assistant. In order to create an officer oriented and assessee friendly tax regime, keeping in view the changing time, a policy decision was taken by the Government in the year 2001 for restructuring of Customs and Central Excise Department vide order dated 19.7.2001. The cadre of Assistants, Tax Assistants, UDC (Special pay), Data Entry Operator Grade-C and Grade-B have been

merged into one cadre of Senior Tax Assistant. Similarly, the existing cadres of UDC, Data Entry Operator Grade-A and LDC have been merged into Tax Assistants. Vide order dated 19.7.2001, the Ministry has directed that no direct recruitment will be made to various cadre for the year 2001-02 without approval of Ministry/Department as the Cabinet has approved one time relaxation for filling of vacancies by promotion in all cadres. Thereafter an order dated 5.6.2002 was issued allocating posts in Group A,B,C and D among various zones, Commissionerates and Directorate General/Directorates by which it clearly reveals that allocation indicated therein supersede all earlier allocations in respect of cadres/categories. It was also made clear that ban on direct recruitment would be applicable only to the post which have been included in cadre restructuring. It has been averred by the applicants that prior to cadre restructuring, cadre strength of Superintendent in Jaipur zone was 121 and that of Inspectors was 508 but after cadre restructuring the number of posts of Superintendent was increased from 121 to 246 and that of Inspectors were decreased from 508 to 390. Against sanctioned strength of 390 Inspectors, 485 persons were working, thus there were 95 excess Inspectors. These excess incumbents were promoted to the grade of Superintendent Grade-B on 23.9.2002.

In the year 2002 new Recruitment Rules were published which came into force from 29.11.2002 and 7.12.2002. As per new Recruitment Rules, the Tax Assistants/Senior Tax Assistant are shown in the feeder cadre for promotion to Inspector. As, vide order dated 19.7.2001 cadre of Data Entry Operators stood merged into Tax

Assistants/Senior Tax Assistants which form the feeder cadre of Inspector, thus, the applicants became eligible to the posts of Inspectors w.e.f. 19.7.2001 itself.

It is further stated that the Hon'ble High Court of Andhra Pradesh vide its order dated 2.3.2005 directed to fill the vacancies which arose prior to commencement of new Rules in accordance with the old Rules of 1979. Against the order of the Hon'ble Andhra Pradesh High Court, an SLP has been filed before the Hon'ble Supreme Court which is pending. After the decision of Andhra Pradesh High Court, the respondent No.1 on 17.5.2006 issued certain directions to implement the said decision. It has been averred by the applicants that respondents have mis-interpreted the judgment of the Hon'ble High Court of Andhra Pradesh and passed order dated 17.5.2006 otherwise also respondent No.3 while issuing order dated 6.7.2006 (Ann.A/1) has clearly violated the directions given in the circular dated 17.5.2006, inasmuch as, the vacancies occurred after publication of new draft rules have been included which ought to have been filled up in accordance with the new Rules. As per order dated 6.7.2006 the eligibility list of as many as 73 candidates has been issued which means respondents are convening DPC for 73 posts. Being aggrieved by the initiation of DPC for the post of Inspector, the applicants filed representations and also served legal notices, but no relief has been granted to the applicants, therefore, the present OA has been filed claiming for the following reliefs:-

(a) That by appropriate order or directions it be declared that the order dated 06.07.2006 (Annexure A-1) and order dated 17.05.2006 (Annexure A-2) are arbitrary,

capricious, irrational, unwarranted and untenable be quashed and set aside.

- (b) That by appropriate orders, directions or instructions applicants be declared eligible for promotion to the post of Inspector and the respondents be directed to hold the DPC for the post of Inspector by taking applicants in the Zone of consideration and their names be included in the eligibility list.
- (c) That by appropriate orders, instructions or directions it be declared that if any promotion order made/passed during the pendency of this O.A. adversely affecting the rights of the applicants may kindly be taken on record and quashed and set aside the same.
- (d) Any other relief which the Hon'ble Tribunal thinks just and proper in the circumstances of the case in favour of the humble applicants may also be allowed.
- (e) Cost of the O.A. be awarded to humble applicants.
- (f) By appropriate order or direction, joint OA be allowed.

3. By filing reply, the respondents have denied the right of the applicants and submitted that the Ministry vide letter dated 17.5.2006 stated that the promotion to the cadre of Inspector effected in pursuance of Hon'ble Andhra Pradesh High Court order dated 2.3.2005 will be subject to the outcome of the SLPs filed against this order and presently pending in the Supreme Court. In terms of letter dated 17.5.2006, the cadre restructuring in the cadre of Inspector was made effective from 7.12.2002, therefore, vacancy position in the grade of pre-restructured cadre of Inspector was required to be worked out prior to 7.12.2002 for filling up the vacancies from amongst the officers eligible for promotion as per old Recruitment Rules of Inspectors, 1979, which were in existence prior to 7.12.2002. It has been further stated that the applicants were not amongst the feeder

cadres eligible for promotion to the post of Inspector as per old Recruitment Rules for filling up the vacancies which existed prior to 7.12.2002 (when the new RRs of 2002 for Inspectors were published), therefore, they were not called for physical test and interview for promotion to the grade of Inspector against the vacancies which existed prior to 7.12.2002 as per old Recruitment Rules of Inspector, 1979. The respondents have stated that the present issue is related to old Recruitment Rules of Inspector, 1979 which were in existence prior to 7.12.2002 whereas the issue decided by the Hon'ble High Court, Mumbai was totally related to new Recruitment Rules of Inspector which were made effective from 7.12.2002. Further, the Ministry vide letter dated 19.7.2006 in continuation of its earlier letter dated 17.5.2006 issued certain directions and in view of the directions of the Ministry, the vacancy position in the grade of Inspector prior to 7.12.2002 was to be worked out as per the pre-revised sanctioned strength of 508 posts and all the vacancies in the grade of Inspector which exists prior to 7.12.2002 were also required to be filled by 100% promotion in terms of old Recruitment Rules of 1979. With regard to the averment of the applicants that vacancies occurred after the publication of new draft rules have been included, the same has been denied by the respondents. The respondents have further submitted that as per old Recruitment Rules of 1979, the post of Inspector was to be filled up by promotion on the basis of 'selection method' from amongst UDCs/Stenographers Gr.III with 5 years regular service, Stenographer Gr.II with two years service and Draftmand/Woman searcher with 7 years' service in the grade. As per column 12 of

Recruitment Rules of 1979, the candidates were required to pass physical test as specified in the said rules itself and the eligible officer were required to pass through an interview before promotion, and as per Note-3 of column 12 of the said Recruitment Rules, if a junior is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding, that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation. Therefore, the respondents have submitted that in view of the rules and regulations applicable at the material time, the action taken by the department is totally correct and thus the applicants are not entitled for any relief.

4. Heard both the parties. So far the averment regarding filing joint OA is concerned, the applicants are permitted to file a joint OA, since the cause of action is identical/common.

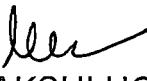
5. Counsel for the applicant contended that similar controversies are pending before the Hon'ble Supreme Court in SLPs (Civil) Nos. 1970-1975 of 2009 D. Raghu & Ors vs R. Basaveswarudu & Ors arising out of the judgment of Hon'ble Andhra Pradesh High Court dealing with the similar controversies.

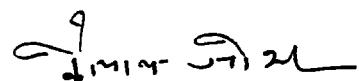
6. Counsel for the respondents also agrees to the submission and also submits that similar controversy is pending before the Hon'ble Supreme Court in the above SLPs.

7. We have considered the rival contentions and also perused the judgment of the Hon'ble Andhra Pradesh High Court. It appears that in the light of the judgment of the Hon'ble Andhra Pradesh High Court, the applicants are not entitled to any relief claimed, but looking to the entire facts and circumstances of the case, since the controversy is pending before the Hon'ble Apex Court, therefore, we propose to dispose off this OA with following directions:-

- (i) The relief claimed by the applicants shall be subject to the decision of the Hon'ble Apex Court in pending in SLP Nos. 1970-1975 of 2009 arising out of Andhra Pradesh High Court judgment in W.P. Nos. 7963, 11090, 18501, 20108, 20890 of 2004 and 4444 of 2005.
- (ii) In case any contrary view is taken against the applicants then the applicants may approach appropriate forum, if advised.
- (iii) In this case vide order dated 10.07.2006 it was ordered that *"The respondents are, therefore, directed to permit the applicants to undertake the selection test i.e. the physical test, interview etc. which is being held in pursuance with impugned order dated 06.07.2006 at Annexure A/1 on provisional basis and their result shall be kept in sealed cover. The selection in question shall also be subjected to the outcome of this Original Application and the factum of filling of this Original Application shall be annotated on each communications made thereof, till the next date."* Accordingly, the results shall be opened after the judgment of Hon'ble Apex Court and shall be subjected to the outcome of SLPs.

8. In terms of above directions, the OA stands disposed of with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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