

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 433 of 2009

MONDAY, this the 15th day of March, 2010

C O R A M

HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. K.I. Joshua
Tax Assistant,
Office of the Commissioner of Central Excise,
Central Revenue Buildings,
IS Press Road,
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Tax Assistant,
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Central Revenue Buildings,
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3. C.P. Jexon
Tax Assistant,
Office of the Commissioner of Central Excise,
Central Revenue Buildings,
IS Press Road,
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... Applicants.

(By Advocate Mr. C.S.G Nair)

v e r s u s

1. Union of India represented by its Secretary,
Department of Revenue,
North Block, New Delhi - 110 001
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi - 110 001
3. The Chief Commissioner of Central Excise,
Central Revenue Buildings,
I.S. Press Road, Cochin - 18



4. The Commissioner of Central Excise,
Central Revenue Buildings,
IS Press Road, Cochin - 18

5. The Commissioner of Customs (Preventive)
Central Revenue Buildings
IS Press Road, Cochin - 18

... Respondents

(By Advocate Shri Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 05.03.2010 this Tribunal on 05.03.10 delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by the rejection of the representation to grant anterior date of promotion as Tax Assistants, this OA has been filed by the applicants. When it was taken up for hearing it was pointed out that the matter of this O.A. was already covered by the order in O.A. No. 320/2009. The relevant part of the said O.A. reads as follows :

"15. Though the respondents claim that the exam conducted in December, 2003 was one for promotion under the 10% quota in which the applicants qualified, the same is patently wrong as is evident from the following twin points:-

- (a) The schedule for the departmental examination for LDCs to be promoted as Tax Assistant, vide Annexure A-15, clearly talks of the paper as "Computer Proficiency test (Theory and Practical)". And the syllabus annexed to the schedule clearly specifies, "Course content for computer proficiency Test for promotion of LDCs to the Grade of Tax Assistants."
- (b) The promotion test under the 10% quota is as to departmental examination with 'knowledge of typing in Hindi or English at a speed of 25 wpm and 30 wpm respectively', whereas the results declared vide Annexure to order dated 06-01-2004 shows "Result



of Practical & Theory" and the result of typing speed is conspicuously missing. The term 'Practical & Theory' does relate to the computer proficiency test, as specified vide (a) above.

16. The contentions of the private respondents also are to be rejected as the earlier decision of this Tribunal in unequivocal term has spelt out that the applicants have already qualified in the relevant test for being considered for promotion as Tax Assistant under the provisions of Rule 4(3) of the Recruitment Rules. That the applicants have taken up the test again cannot in any way adversely affect their right to claim promotion and seniority etc., on the basis of their qualifying in the test in 2003. Their attempt has to be taken as to prove their mettle now also.

17. In view of the above, the O.A. fully succeeds. Annexure A-13 order is hereby quashed and set aside. *It is declared that the applicants are entitled to be promoted as Tax Assistants on the basis of their qualifying in the computer proficiency test held in December, 2003 and accordingly they are entitled to be fixed their pay and allowances admissible to the Tax Assistants, notionally from the date of their passing and actually from the day they have started enshouldering higher responsibilities.* Monetary benefits arising out of the above order shall be paid to the applicants within a period of six months from the date of communication of this order. Their seniority shall also be advanced accordingly, of course, after due notice to the affected parties. Time calendared for the same is also six months from the date of communication of this order.

18. As the applicants have been unnecessarily dragged to this avoidable litigation they do deserve cost to be paid by the respondents, but the sober way of submission made by the Senior Central Government Standing Counsel dissuades us from saddling the Government with cost. Hence, no costs."

(emphasis supplied)

2. The brief facts of the OA are as under :

The applicants who joined as Sepoys were promoted as LDCs on 14.02.2003. The restructuring of the Customs Department took place in 2002 and a new post of Tax Assistant came into force on 2.5.2003. As per the Recruitment Rules, all LDCs appointed on regular basis at the commencement of the rules shall, on passing the departmental computer proficiency examination, be deemed to have been promoted as Tax Assistants with effect from the date of passing such examination. A number of LDCs cleared the computer practical test held on

27.05.2003 and were promoted as Tax Assistants. The applicants were not permitted to appear for the test held on 27.05.2003. But the first and second applicants appeared for computer proficiency test held on 02.12.2003 and passed the practical test. As they failed in theory paper, they were not promoted. The third respondent should have conducted the tests for those who failed within a period of three months. But he did not. Later, the applicants applied for appearing in the departmental examination, they were not permitted on wrong interpretation of the rules. The applicants filed O.A. No. 304/2008 challenging the rejection of their representation for appearing in the departmental examination for promotion as Tax Assistant on the ground that they did not have qualifying years of service. The said O.A. was allowed vide order dated 21.11.2008 as under :

"11. Having heard the learned counsel for both sides and after going through the pleadings and the judgment brought to our notice, we find that the provisions of Recruitment Rules cannot be diluted by way of a letter as the Recruitment Rules are issued under Article 309 of the Constitution. We are therefore of the considered view that by virtue of Rule 4(3) of Recruitment Rules 2003 the applicants are entitled to be promoted as Tax Assistants w.e.f. the date they passed the departmental computer proficiency examination if they come within the seniority list as determined by the Appointing Authority. *Accordingly we follow the judgment of this Tribunal in O.A.175/2008 and allow the O.A. with similar direction. The O.A. is therefore allowed with a declaration that the applicants are entitled to be promoted as Tax Assistants w.e.f. the date they passed the computer proficiency examination prescribed under Rule 4(3) of the Recruitment Rules, 2003 if they fall within the seniority list as determined by the Appointing Authority at the commencement of the said Rules.* The respondents are directed to issue necessary orders accordingly within a period of three months from the date of receipt of a copy of this order. No costs."

(emphasis supplied)

The applicants submit that they were not permitted to appear in the computer practical test held on 28.05.2003 alongwith others. This was a case of

clear discrimination. All those LDCs appointed on regular basis at the commencement of Recruitment Rules for the post of Tax Assistant which came into force on 2.5.2003 on passing the departmental computer proficiency examination, should be deemed to have been promoted as Tax Assistants with effect from the date of passing. Clarification in Annexure A/10 to the effect that a LDC on the date of examination to be held for promotion to the post of Tax Assistant should have completed 6 years of regular service, does not apply to the applicants. The respondents conducted a test in computer proficiency on 15.12.08 purportedly in pursuance of the direction in OA No. 304/08 and promoted the applicants as Tax Assistants from that date. But the request of the applicants for antedating their promotion as Tax Assistants was illegally rejected. Hence the O.A. should be allowed.

3. The respondents contested the O.A. In their reply they submitted that pursuant to the decision of this Tribunal in OA No. 304/2008 and Ministry's letter No.A32022/22/2008-Ad IIIA dated 18.09.08, any LDC on regular basis at the commencement of the Recruitment Rules for Tax Assistant notified on 2.5.2003 is entitled to deemed promotion on the post of Tax Assistant with effect from the date of passing the departmental computer proficiency examination. The department conducted the examination on 15.12.2008 and the applicants were promoted on 16.12.08. They took the stand that the applicants have already been granted the eligible promotion. There is no claim for the applicants that they have passed the computer proficiency test on 02.12.03. The examination conducted on 02.12.03 was a departmental examination for 10% promotion quota vacancies of Tax Assistant available for LDCs and Head Havildars who have rendered seven years regular service. This examination mentioned in the Schedule to the Recruitment Rules of Tax Assistant is entirely different from the computer proficiency

examination as per Rule 4(3) of the Recruitment Rules of Tax Assistant.

4. In the rejoinder, the applicants reiterated that the test conducted on 27.05.2003 was only a practical activity test in computer proficiency. But on 2.12.2003 tests in both practical as well as theory paper were conducted and the applicants 1 and 2 passed the practical paper. As they did not qualify in the theory paper, they were not given the promotion. This was a clear discrimination shown to the applicants compared to those who were promoted on the basis of the test conducted on 27.05.2003 which had only practical test. The applicants should have been promoted with effect from 02.12.2003 when the 1st and 2nd applicants passed the practical activity test in computer proficiency. The applicants had appeared for the test on 10.12.2008. But before the announcement of the result of the test, they were directed to appear for another test on 15.12.2008 in pursuance of the decision of this Tribunal in OA No. 304/2008. All the three applicants appeared for the test and passed. This was only a practical activity test in computer proficiency similar to the test conducted on 27.05.2003. In fact, the applicants 1 and 2 had passed the same test on 02.12.2003. Those who were Lower Division Clerks on regular basis as on 02.05.2003 were required to pass only in practical activity test on computer proficiency and not the theory paper. This is evident from the examination conducted on 27.05.2003 and 15.12.2008. Those who became Lower Division Clerks after 02.05.2003 have to pass theory as well as practical activity test in computer proficiency. Two applicants in OA No. 175/08 who were also applicants in OA No. 320/2009 and passed the computer proficiency test on 02.12.2003, were granted notional promotion with effect from 02.12.2003 with all consequential benefits. Therefore, the applicants prayed that this OA may be allowed with all consequential benefits.

5. Learned counsel for the parties were heard and the documents perused.

6. Admittedly, the applicants 1 and 2 having become Lower Division Clerks on 14.12.03 were eligible to appear in the computer practical activity test held on 27.05.2003. But they were not permitted to appear in the said test. They passed the practical activity test on 02.12.2003 as a part of the departmental examination for promotion of LDCs/Head Havaldars to the cadre of Tax Assistants which consisted of practical activity test in computer proficiency, theory test in computer proficiency and the typing test. They failed in the theory paper of the test conducted on 02.12.2003. But they passed the same on 10.12.2008. Those who became Lower Division Clerks after 02.05.2003 only have to pass the theory and practical activity test in computer efficiency. As decided in OA No. 320/2009, OA No. 304/2008 and OA No. 175/2008, the applicants are entitled to be promoted as Tax Assistants from the date they passed the computer proficiency test under Rule 4(3) of Recruitment Rules 2003 if they fall within the seniority list as determined by the Appointing Authority at the commencement of the said rule. The applicants in OA 320/09 were held by this Tribunal to be entitled to be promoted as Tax Assistants on the basis of their qualifying in the computer proficiency test held in December, 2003. The only difference between the applicants in OA 320/2009 and the applicants 1 and 2 herein is that while the former had passed in all the papers including theory in the test conducted on 02.12.2003, the latter has passed in the practical activity test on computer proficiency and failed in theory paper. In terms of Section 4(3) of Recruitment Rules, 2003, the LDCs on regular basis falling within the seniority list on the commencement of Recruitment Rules on 02.05.2003 need to pass computer proficiency examination, which as conducted by the authorities for such LDCs, consisted only the practical paper. Therefore, the applicants have to pass the computer practical test only for promotion. The applicants 1 and 2 had passed

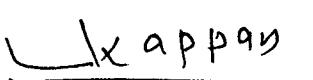
the practical activity test on computer proficiency on 02.12.2003 which was the same as the test held on 15.12.2008 and similar to the one conducted on 27.05.2003 and they were required to pass only the practical activity test and no theory paper on computer proficiency. Therefore, they are entitled to the pay and allowances admissible to the Tax Assistants notionally from the date of their passing and actually from the date they started shouldering the responsibilities of Tax Assistant. The applicant No. 3 having been given seniority with retrospective effect from 14.02.2003 had passed the practical activity test on computer proficiency on 10th December, 2008 only. Hence, he will be eligible for the pay and allowances of Tax Assistant only from 10th December, 2008. He is already promoted with effect from 16.12.2008.

7. In the result, the O.A. is allowed in the following terms. The respondents are directed to grant notional promotion to the applicants 1 and 2 as Tax Assistant with effect from 02.12.2003 and grant all consequential service benefits arising therefrom within a period of two months from the date of receipt of a copy of this order.. No order as to costs.

(Dated, the 15th March, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

cvr.