

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 438/2006

FRIDAY THIS THE 13th DAY OF OCTOBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

P.T. Chacko, Tax Assistant
Central Excise Divisional Office
Kottayam.

Applicant

By Advocate Mr. CSG Nair

Vs.

1 Union of India
represented by Secretary
Department of Revenue, North Block
New Delhi.

2 The Chairman
Central Board of Excise & Customs, North Block
New Delhi-1

3 The Chief Commissioner of Central
Excise & Customs, IS Press Road
Cochin-682 018

4 The Commissioner of Central Excise & Customs
Central Revenue Buildings, IS Press Road
Cochin-682 018

Respondents.

By Advocate Mr. P. Parameswaran Nair, ACGSC

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is assailing the denial of promotion to him and the rejection of his case by the impugned order despite the directions of this Tribunal in OA 867/2003 earlier filed by him.

2 The applicant joined service in 1976 as a Sepoy in the Central Excise Department and has completed more than 22 years in the ministerial cadre. The promotion from the cadre of UDC now designated as Tax Assistant is either as Inspector or as Deputy Office Superintendent. The UDC has to pass departmental tests to get promotion to the cadre of Tax Assistant or Inspector. Although the test for both the cadres are the same, one should get 65% or more marks in each paper for promotion as Inspector, whereas a pass in all the papers is enough for promotion to the cadre of Tax Assistant.

3 As per the Recruitment Rules for the post of Inspector of Central Excise only $33 \frac{1}{3}\%$ of vacancies are to be filled up by promotion and $66 \frac{2}{3}\%$ by Direct recruitment only. Promotion to the post of Inspector is from qualified Tax Assistant/ Stenographers/ Women Searchers/ Draftsman. Those who wish to be promoted as Inspector have to pass a departmental test and should possess the required qualifying service in the respective feeder cadre. Besides, they must have the required Physical standard and pass a physical endurance test and an interview. As regards age, the provision in A1 Recruitment Rules is 'the maximum age of eligibility for the departmental candidates shall be 45 years, which shall be relaxable to 47 years in the case of candidates belonging to Scheduled Caste or Scheduled Tribe category. However those of the officials who were not considered for such promotion up to the age of 45 or 47

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years as the case may be, shall be granted the benefit of relaxation in age limit up to 50 years in order to enable a fair opportunity of a minimum of two chances. However those officials who were considered for promotion up to the age limit of 45 or 47 years as the case may be on two or three occasions and were not found fit for promotion shall not be eligible for this relaxation.

4 While so, the respondents issued Annexure A-2 order restructuring the Central Excise and Customs Department wherein a number of new posts in all the cadres have been created in order to reduce the stagnation. The Government also issued orders for filling up all the posts by promotion without resorting to direct recruitment as a one time measure.

5 It has been further submitted that the applicant is figuring at Serial No 86 in the seniority list of UDCs. A DPC was conducted during December 2002 to fill up the vacancies created by the Annexure A2 order. The applicant was then not eligible to be considered for promotion because he had not passed all the papers in the departmental tests with more than 65 % marks. He had to pass one more paper for becoming qualified and therefore he submitted a representation for relaxing the condition of departmental test as at A-4 dated 11.11.2002. This representation was not considered and in the DPC, the applicant's juniors figuring at S.No 91 was promoted. One Sri V Govindan at S.No 84 was also

promoted although he was not having the required qualifying service as per the Recruitment Rules.

6 The second respondent issued Annexure A-6 orders dated 8.10.2003 relaxing conditions like passing the Departmental tests and qualifying service. On receipt of Annexure A-6, the applicant submitted a representation to the 4th respondent requesting for favourable consideration as the vacancies were of 2002 and he was below 50 yrs as on 1.1.2002 which was followed by another request on 21.10 2003. But the applicant was never considered for promotion and hence he filed OA867/2003 before this Tribunal. By interim order dated 28.2.2003 he was called for interview and the result was kept in sealed cover till the disposal of the OA. The OA was disposed off with a direction to declare the result of the DPC and to grant the benefit to the applicants if the applicant are found eligible as per the relaxed standard. The result was communicated to the applicant to the effect that the applicants were not eligible to be promoted as per the relaxed standards prescribed in Board's letter dated 8.10.2003- Annexure A-6. Then the applicant had filed CPC No 67/05 and the Tribunal issued an order on 10.3.2006 for taking a decision within one month. On receipt of this direction the respondents issued the impugned order dated 12.4.2006 rejecting the direction for relaxation of age. The CPC was then closed by the Tribunal.

7 In short, the contention of the applicant is that he was fully qualified and eligible to be considered for promotion as Inspector except that he is over-aged as on 1.1.2003, but as the vacancies are of 2002 and all the relaxations granted are applicable to candidates considered for those vacancies, the applicant also should be considered as he was below 50 yrs. of age as on 1.1.2002.

8 The respondents have filed a reply statement denying the averments of the applicant. It has been submitted that promotion to the cadre of Inspector is not a regular channel of promotion for officers of the Ministerial cadre, it is rather by a process of selection from various cadres and the regular channel for promotion for UDC is to the grade of Sr Tax Assistant, Dy Office Supdt. and Administrative Officer. The applicant was not considered for promotion as Inspector in the DPC held during November 2002 since he had not passed the qualifying examination with the required qualifying marks. All eligible candidates who possessed the requisite qualifications as on 1.1.2002 were considered and the junior mentioned by him was considered as he had passed the departmental qualifying examination by then. The applicant was not considered for the year 2003-04 in th DPC held in October 2003, however as per the interim order of this Tribunal, he was considered and was informed that he was not eligible to be promoted to the category of Inspector as per the relaxed standards prescribed vide AnnexureA6 instructions as he had crossed the upper age limit prescribed in the Recruitment

Rules. They have further submitted that the Department was helpless in the matter as the applicant did not pass the Departmental Examination when there was no requirement of relaxation of age and he crossed the age-limit when the relaxation was given in respect of passing the Departmental Examination and that the applicant has no right to contend that he should be promoted overlooking his age and no discrimination has been shown in the matter.

9 A rejoinder has been filed by the applicant giving the background of the restructuring process. The restructuring of the Department of Central Excise and customs was ordered as per Annexure A-2 order dated 19.7.2001. By Annexure A2, 2282 posts of Inspector were created and ordered to be filled up by promotion only. In fact, as per Recruitment Rules only one third of the posts were to be filled by promotion, but this stipulation was relaxed by the government as per Annexure A-3 as a one time measure so as to grant promotion to the maximum number of candidates. The Recruitment Rules were published on 29.11.2002 and the DPC was held in December, 2002 on the basis of Annexure A1 giving relaxation of maximum age limit as 50 years. Annexure A-6 giving further relaxation in qualification was issued in 2003 and both Annexures A-1 and A-6 were applied for filling up the posts which arose on 1.1.2002 on account of the restructuring and hence he was eligible to be considered against those vacancies.

10 We heard Sri C.S.G.Nair for the applicants and Sri Parameswaran Nair ACGSC for the respondents.

11 The Learned counsel for the applicant argued that the applicant was only 49 years old as on 1.1.2002 and hence the applicant did not require any relaxation in the age-limit and the impugned order is based on a wrong interpretation of the Recruitment Rules more specifically that the respondents have not considered the provisions of Note-3 in the RRs. The counsel drew our attention to the directions/observations of this Tribunal in OA867/2003 and pointed out that the respondents have not understood the orders of the Tribunal in the proper spirit and they have not considered his case with reference to the eligibility as on 1.1.2002. The Learned counsel for the respondents submitted that there was no provision to relax the age limit beyond 50 yrs. and it would open up further litigation.

12 The main question arising for our consideration is whether the applicant was eligible for the relaxation in passing the Departmental examination and qualifying service granted by the Annexure A-6 order of the respondents vis-a-vis the provisions of the Recruitment Rule prescribing a maximum age limit of 50 yrs for promotion to the post of Inspector of Central Excise at the time of consideration of his case by the DPC held in October 2003. The same question had been considered by us in the earlier OA 867/2003 filed by the applicant and a direction was given to the respondents to consider

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the applicants if necessary by giving them the benefit of further relaxations in the special circumstances of the case. But the respondents have not appreciated the matter in the proper spirit and mechanically rejected the request of the applicant. Hence it is necessary for us again to dwell upon the special facts requiring consideration in dealing with the case of the applicant.

13 The starting point is the restructuring ordered in the department in the year 2001 as a result of which 2282 posts of Inspectors were created and had to be filled up. According to the recruitment rules of the post 2/3rd vacancies had to be filled by direct recruitment and the rest by promotion. Faced with the daunting task of filling up the posts by direct recruitment and the representations from employees for providing promotional opportunities, the Department as a onetime measure relaxed the provisions of the RRs to enable filling up the posts by promotion only so that the stagnation among the employees could be resolved to some extent. The RRs were also amended to enable consideration of the employees in the feeder cadre up to the age of 50 yrs from the earlier provision of 45 years. The amended Rule came to be issued in November 2002. The applicant was within the amended age limit up to December 2002 but he could not be considered for promotion during that period as he had not passed all the papers in the Departmental examination. These facts are admitted. Finding that still number of vacancies remained unfilled, the respondents further relaxed the qualifications of pass in the

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departmental examination and qualifying service etc. These orders were issued in Nov 2003 by which time the applicant had crossed the age-limit of 50 yrs. This is in fact the crux of the problem which has been created by the issue of piecemeal relaxation orders. The respondents have taken the stand that the relaxations can be given only as on the date of the DPCs which met after the issue of each order, whereas the applicant has contended that such a stance would only help the new entrants in the office and those who have more service in the department like the applicant are denied the promotion which is contrary to the intention of the government. It is admitted on the one hand by the respondents that the entire exercise of restructuring and the relaxations given were to reduce the stagnation in the Department. This is very evident from the orders issued from time to time. Hence in our view there is considerable force in the argument of the applicant that all the relaxations granted in various orders in Annexures A1, A2, A-6 and A-10 are to be viewed as a part of the restructuring exercise and intended to ensure that the maximum no. of employees get the benefit of promotion within a fixed period after which the relaxations granted would cease to operate. The A-6 order makes this intention of the Department very clear by stating that all promotions to the various grades should be completed and the compliance report sent by December 2003. In fact the whole gamut of relaxations given was a one time measure to be operative till December 2003 after which it was to be treated as a closed chapter.

14 In the instant case therefore the respondents could have as soon as the instructions regarding relaxation of the Departmental examination considered the case of the applicant who even going by the date of eligibility as on 1.1.2003 was only short of one month in respect of the age-limit of 50 years. That was the spirit of the instructions of the Tribunal in the earlier OA which the respondents could not imbibe properly either consciously or unconsciously. The respondents have stated in the Annexure A-12 order that the applicant along with 5 others were found to be qualified for promotion to the post of Inspector, however they were not eligible to be promoted under A-6 order as they have crossed the age limit prescribed in the recruitment Rules. Hence it is clear that this is the only factor standing in the way of promotion of the applicant.

15 As discussed in the foregoing paragraphs, in our considered opinion, the exercise of filling up the vacancies as a result of restructuring i.e, the vacancies which came into being in 2001 and proposed to be filled up in accordance with the RRs issued in November 2002 and the further relaxations granted by the A-6 order is to be viewed as a combined exercise intended to provide maximum opportunity to the employees in service to avail of the promotional opportunities thrown open to them by the restructuring exercise so as to remove the stagnation in the Department which was the stated objective of undertaking such a reorganisation. The fact that the Department issued the relaxed guidelines in a piecemeal

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fashion should not act as a detriment to the employees by depriving them of benefits intended for them. Moreover, the orders as such do not state that they are to be effective only from the date of issue, if at all, they only stipulate an outer limit for completion of the action contemplated. Such a view would result in an absurd situation for eg: if A-6 order has to have force only from the date of its issue i.e. 8th October 2003, it would be valid only for two months as 31st December was fixed as the outer limit therein by which all promotions according to relaxed procedures would have to be got completed and only those who became eligible after 8th October could be considered for grant of relaxation. Surely it was not the purport of the order to deny the benefits of relaxation to the seniors who had been stagnating without promotions while granting the benefit to the juniors. Therefore we are of the view that these orders are general orders applicable to all the vacancies generated by the restructuring during the period when the process was continuing till such time as fixed by the Department declaring the restructuring exercise as closed.

16 Admittedly the applicant was not considered in the DPC held in November 2002. This tribunal had already directed consideration of his case by the DPC held in October 2003. Hence in the light of the above observations, the applicant was eligible for consideration by applying the relaxation granted in Annexure A-6. We accordingly direct the respondents to promote the applicant as Inspector in the

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restructured vacancy for which he was found suitable by the DPC held in October 2003, applying the relaxations granted in Annexure A-6. Annexure A-14 is quashed. OA is allowed.

Dated 13th October, 2006.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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