

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

.....

OA-445/93.

Wednesday, this the 29th day of June, 1994.

HON'BLE MR. J.P. SHARMA, MEMBER(J).
HON'BLE MR. S. KASIPANDIAN, MEMBER(A).

1. Sri. P.P. Raghavan, Tax Assistant,
Special Customs Preventive Division,
Calicut.
2. Sri. A.T. Vijayan, U.D. Clerk,
Central Excise Divisional Office,
Cannanore.
3. Sri. C.P. Balakrishnan, Tax Assistant,
Central Excise Divisional Office,
Cannanore.
4. Thomas. K. Varghese, Tax Assistant,
Central Excise Divisional Office,
Trivandrum.
5. P.L. George, Tax Assistant,
Central Excise & Headquarters, I.S. Press Road,
Ernakulam.

...Applicants

By advocate Mr. Girijavallabhan.

Versus

1. The Collector of Central Excise Customs,
Central Revenue Building, I.S. Press Road,
Ernakulam, Cochin - 18.
2. The Deputy Collector (P&E), Office of the
Collector of Central Excise and Customs,
Central Revenue Building, I.S. Press Road,
Ernakulam, Cochin-682018.

...Respondents

By advocate Mr. C.N. Radhakrishnan.

ORDER (ORAL)

J.P. SHARMA :

Applicant no.1 who was earlier working as Tax
Assistant has since been promoted as Tax Inspector
and the learned counsel appearing for him did not

press this application and so any decision in this case will not affect the applicant no.1.

2. These applicants jointly filed this application aggrieved by the order dated 13-7-92 by which the respondents have issued a seniority list of Tax Assistants (Annexure A.3). They have also assailed the order dated 14-10-92 (Annexure A.6) whereby seniority list of Tax Assistants dated 1-1-92 has been finalised. This order appears to have been purportedly issued in compliance with the observations of the judgment in OA-1248/91 filed by Shri P.P. Raghavan and 4 others.

3. A notice was issued to the respondents who contested this application taking a number of objections to the maintainability of the proceedings earlier to OA-1248/91 and dismissed as pre-mature.

4. The applicants have prayed for following reliefs:

- "(a) to declare that para 7 of Annexure A-1 having been declared null and void in O.A.473/89 and concurred in O.A.778/91 and O.A.802/91, the respondents should have prepared Annexure A-3 seniority list of Tax Assistants on the basis of the remaining instructions contained in Annexure A-1.
- (b) to direct the respondents to re-determine the seniority of the applicants and others in the cadre of Tax Assistants in relation to their dates of joining in the cadre of UDC as fixed in Annexure A-2 seniority list on par with the seniority list of Inspectors published on 15.7.92.
- (c) to call for the records of the case and declare that Annexure A-3 seniority list of Tax Assistants published on 13.7.92 is only provisional view of the findings of this hon'ble tribunal in Annexure A-5 order and any promotions made from the said provisional seniority list before publishing the final seniority list is illegal, discriminatory and arbitrary and liable to be declared so.
- (d) to declare that Annexure A-6 order is illegal and discriminatory.

- (e) to issue such further reliefs this Hon'ble tribunal deems just in the circumstances of the case and also to award the costs of this O.A. "

Relief (a) is not being pressed by the learned counsel and he gave a categorical statement at the Bar that the relief should not be considered either way for applicants 2 to 5. Learned counsel is pressing for relief no. (b). He is also pressing for relief no. (c).. Since the applicant no.1 has not been deleted from the array of applicants and the same counsel continues to represent applicant no.1, he cannot, therefore, press this relief adverse to the interest of applicant no.1. This relief is only to the extent that the seniority list of Tax Assistants dated 13-7-92 should not be given finality and any promotion effected to the rank of Tax Inspector from this list, should only remain provisional and be not given finality which has also been observed, while deciding OA-1248/91, summarily, a copy of the order having been annexed as Annexure A.4 to the O.A.

5. In view of the above facts, we are only considering the relief at clause (b) of para 9 of the O.A. The applicants have also prayed for a declaration ^{as illegal} of Annexure A-6/which is nothing but the clearing of the seniority of 13-7-92 of Tax Assistants as final, and that too, be declared as void.

6. We have heard the learned counsel for the applicants at considerable length and after a sufficient number of queries, we could get what actually the relief is claimed by the applicants 2 to 5. Learned counsel for applicants emphatically asserts that the

seniority list as on 1-1-92 which is for the Tax Assistants vary materially with the seniority list of Tax Assistants dated 13-7-92 inasmuch as the name of applicants no. 2 to 5 figure in Annexure A-2 at serial no. 170, 177, 181 and 185 and the name of these applicants at all do not figure in the seniority list of Office Assistants dated 13-7-92 (Annexure A-3). He, therefore, on the basis of pleadings, argued that the name of these applicants should also be included in the seniority list of Tax Assistants because certain junior persons to the applicants have already been placed in the list of Tax Assistants.

7. Counsel for the respondents argued that the respondents are in a predicament inasmuch as they had to comply with the directions issued by Ernakulam Bench of Central Administrative Tribunal in two cases, copy of which has been annexed with the reply in OA-763/89 decided on 29th August, 90 and OA-778/89 decided on 10th April, 92. The learned counsel for respondents has read out the main directions in OA-778/89 starting from para 13 and highlighted para 14 and 15. The main direction appears to be that :

" The department is bound to effect all promotions in the category of Tax Assistants on the basis of the seniority list of UDC as on 1.1.89 fixing a cutoff date as on 1.1.92. The promotions hitherto made from UDC to Tax Assistants are declared to be only ad hoc not conferring any right on the persons who got such promotions earlier on the basis of the seniority list other than that upheld by us by Annexure-C judgment. "

It appears that these directions have been pointed out by the respondents in their seniority list of Tax Assistants in a particular manner that if any person

is affected by virtue of this direction and that he was not the party in those proceedings, then the proper remedy could have been not by filing separate application but for going for a review of that judgment so that their view point could have also been considered while reinforcing the direction in the review judgment. This has not been followed by the present applicants 2 to 5. They have contended by filing OA-1248/91 before exhausting the proper remedies which was dismissed as premature. There is still an issue that this application will ^{even} lie because no opportunity was given to the applicants while disposing off the OA-1248/91. A copy of the judgment has been placed as Annexure A.5. Thus, the present O.A. is not maintainable, as such. However, since we have heard the learned counsel for the applicants and the application remained pending with the Bench for a number of sittings, we are ^{not} disposing it off as not maintainable.

8. Coming to the merit of the case, we could not get how the applicants can get a proto-type seniority of Tax Assistants revised in pursuance of the direction issued in the judgment dated 10-4-92 in OA-778/91. The grievance of the applicants, therefore, could not be rightly considered by the respondents as they have complied with the directions given in the above OA. However, the fact remains that the applicants got a berth in the seniority list as on 1-1-92. This ordinarily can't be denied to applicants in the seniority list of Tax Assistants drawn subsequently in July, 92. The respondents, therefore, while revising the seniority after a year or so shall look to the matter in light

of the other decisions of Ernakulam Bench of Central Administrative Tribunal on the issue of seniority of the grade of UDC/Tax Assistants.

9. The next promotional post is that of Tax Inspector which is a selection post and there are a number of feeder grades which qualify for the said post, namely, Stenographers, UDC, Women Searchers and many others. Thus, the applicants should not have any grudge on that account. However, regarding 25% promotion which is on the basis of seniority-cum-fitness, the applicants may be having some disadvantageous position. We have already observed (and do not give any specific direction to respondents) to consider the case of the applicants in conformity with the various other decisions while revising the seniority list of July, 1992 at suitable interval as per practice prevalent in the department.

10. In the circumstances, the application is disposed of, without granting any relief, as said above. No costs.



(S. KASIPANDIAN)
MEMBER (A)



(J.P. SHARMA)
MEMBER (J)

29.6.1994.

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