

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No.458/97

Wednesday, this the 19th day of January, 2000.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Ambikavathy.K.,  
Tax Assistant,  
Central Excise Division,  
Thiruvananthapuram.

..Applicant

By Advocate Mr.D. Sreekumar

Vs.

1. The Union of India represented  
by Secretary to Government,  
Ministry of Finance,  
Department of Revenue,  
Central Secretariat,  
New Delhi.
2. The Commissioner of  
Central Excise, Cochin - 18.
3. The Deputy Commissioner of  
Central Excise, Central  
Revenue Building,  
I.S. Press Road, Cochin.
4. B.S. Venkitesha Murthy,  
Deputy Commissioner(P&V),  
Central Excise,  
Central Revenue Buildings,  
I.S. Press Road, Cochin-18.
5. Rema. E.,  
Inspector of Central Excise,  
Thaliparamba Range. Through the Deputy  
Commissioner(P&V),  
Central Excise,  
Central Revenue  
Buildings,  
I.S. Press Road,  
Cochin - 18.
6. Meera. C.J.,  
Inspector of Central Excise,  
Ambalamugal Range. - do -
7. Sam Albert,  
Inspector of Central Excise,  
Quilandy Range. - do -
8. Suresh,  
Inspector of Central Excise,  
Manjeri Range. - do -

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| 9.  | K.M. Sudhakaran,<br>Inspector of Central Excise,<br>Office of Superintendent of<br>Central Excise,<br>Kodungalloor. | Through the Deputy<br>Commissioner(P&V),<br>Central Excise,<br>Central Revenue<br>Buildings,<br>I.S. Press Road,<br>Cochin-18. |
| 10. | P.K. Muralidharan,<br>Inspector of Central Excise,<br>C.P.U. Kollam.  | - do -   |
| 11. | V. Muralidharan,<br>Inspector of Central Excise,<br>Kalamassery Range.  | - do -   |
| 12. | C.P. Manoharan Nair,<br>Inspector of Central Excise,<br>Munnar Range.   | - do -   |
| 13. | H. Abdul Rasheed,<br>Inspector of Central Excise,<br>Kollam Divisional Office.                                      | - do -   |
| 14. | K.V. Mathew,<br>Inspector of Central Excise,<br>Maroor Range Office.  | - do -   |
| 15. | K. Venugopalan,<br>Inspector of Central Excise,<br>Munnar Range.  | - do -   |
| 16. | K.P. Pramod,<br>Inspector of Central Excise,<br>Internal Audit,<br>Headquarters Office,<br>Cochin.                  | - do -   |

...Respondents

By Advocate Mr. George Joseph for R-1 to 3

By Advocate Mr.M. Girijavallabhan for R-5 to 7, R-10 to 13&R-15

Mr.B.S. Venkatesha Murthy (R-4, party in person)

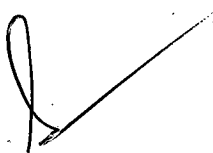
The application having been heard on 19.1.2000, the  
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-7, to declare that she is entitled to promotion as Inspector, Central Excise, that the selection conducted on 21.2.97 by the Departmental Promotion Committee is void and to direct the respondents to promote her as Inspector, Central Excise.

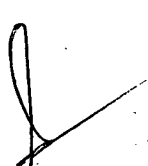
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2. The applicant commenced her service as Lower Division Clerk on 27.2.79 under the respondents. She is now holding the post of Tax Assistant which is the feeder category to the post of Inspector, Central Excise. The applicant was called for interview for selection to the post of Inspector, Central Excise conducted on 31.3.94. Due to illness, she could not appear. Thereafter, she was again called for selection in January 1996. Thereafter, another selection was conducted in July 1996. Meanwhile, a communication was received from the 2nd respondent regarding the selection for the year 1997. The applicant's name did not figure in the list of eligible officers. She was informed that since she was considered twice previously, she could not be considered further. She preferred a representation. Her request was turned down. Aggrieved by the same, she preferred O.A. No. 145/97 before this Bench of the Tribunal which is pending. Respondents have denied third chance to the applicant on the basis of the letter produced along with A-5. A-1 recruitment rules do not limit the number of chances for selection. The 3rd respondent acted with malice. She did not get a fair deal from the respondents. Limiting number of chances for promotion is not contemplated as per the recruitment rules.

3. In the reply statement filed by the official respondents, they contend that the applicant is not eligible to be called for interview for the post of Inspector of Central Excise. In terms of the Ministry's letter dated 6.10.75, Ministerial officers will be considered for the post of Inspector of Central Excise in the normal course, only if they are below 38 years of age. Further, the applicant could not come out successful in the interview held

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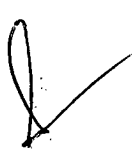
on 21.2.97 and hence she could not be selected to the post of Inspector of Central Excise. Respondents have not denied any eligible claim of the applicant. Her suitability for promotion was examined by the Departmental Promotion Committee thrice and she was not selected for promotion to the post of Inspector. There is no infirmity in not promoting the applicant.

4. In the reply statement filed by the 4th respondent, it is stated that the allegation that the 3rd respondent commented as soon as the applicant entered the hall that "You obtained the direction from CAT. Then you may get promotion also from CAT" makes this respondent sad and unhappy. The averments with regard to malafides made in the O.A. are irresponsible, mischievous, false and unbecoming of a Government servant.

5. In the reply statement filed by respondents 5 to 7, 10 to 13 and 15, it is contended that the applicant having not challenged the order dated 6.10.75, she is estopped from contending that the same is illegal and arbitrary.

6. In the O.A., it is stated that aggrieved by A-4 order, the applicant filed O.A. No. 145/97. A-4 is the order dated 24.1.97. There, it is clearly stated that "The person who had been considered for promote in the post were found unfit more than once, will not be eligible for this concession." O.A.No. 145/97 was dismissed on the submission made by the learned counsel for the applicant that there is no provision for conducting interview for the post of Inspector, Central Excise as per the recruitment rules. So, whatever grievance is projected based on A-4 and

contd..5/-



filing of O.A. based thereon is no longer in existence.

7. The applicant has alleged malafides against the 4th respondent. The 4th respondent is the Deputy Commissioner, Central Excise, Cochin, brought in the party array by name. In the reply statement filed by the 4th respondent, he has stoutly denied all the allegations made against him in the O.A. Evidence to establish malafides has to be strong and convincing. A mere averment in the O.A. is not sufficient to establish malafides. We do not find any evidence strong and convincing as to the malafides alleged by the applicant against the 4th respondent.


8. The learned counsel appearing for the applicant vehemently argued that an interview was conducted by the Departmental Promotion Committee for promotion to the post of Inspector, Central Excise and conducting interview is bad in law since there is no provision as per A-1 recruitment rules to conduct an interview. The applicant is seeking the post of Inspector, Central Excise by promotion. Below Column No.12 of the Schedule to A-1, it is clearly stated that:

"Candidates will be required to possess such physical standards and pass such written test and payable tests and conform to such age limits as may be specified by the Central Board of Excise and Customs from time to time."

9. Respondents are relying on R-1 dated 6.10.75. They also rely on R-2.

10. The learned counsel for the applicant argued that as per the note below Column No.12 of the Schedule to A-1 only those

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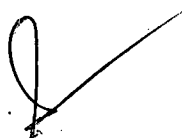


orders issued by the Central Board of Excise and Customs after the commencement of A-1 and not before the commencement of the same can be relied on. A-1 recruitment rules are of the year 1979. R-1 is of the year 1975. The scope of R-1 was considered by a Division Bench of this Bench of the Tribunal in O.A. No. 1627/92. The Division Bench in R-5 order did not accept the contention of the applicant therein that the letter dated 6.10.75 which is R-1 here is not valid. It is very clear from a reading of R-5 order in O.A. No. 1627/92.

11. The learned counsel appearing for the applicant drew our attention to the ruling in O.A. No. 540/93 of this Bench of the Tribunal. We have gone through the decision in O.A. No. 540/93. Facts are not identical. There, it was a case where the Departmental Promotion Committee considered the applicant therein and found fit for promotion. Here, it is not so. O.A. No. 540/93 was considered in O.A. No. 1627/92 and has been distinguished on facts. So, the position is that O.A. No. 540/93 does not apply to the facts of the case at hand. Even if it applies to the facts of the case, R-5 order being later has to be followed. In the light of the findings in R-5 order, the arguments advanced by the learned counsel for the applicant that no reliance can be placed on R-1 for the reason that it is prior to the commencement of A-1 recruitment rules cannot be accepted.

12. The other argument advanced by the learned counsel for the applicant is that there is no provision for conducting interview as per A-1 recruitment rules. Recruitment rules (A-1) are to be read in the light of the note below Column No.12 of the Schedule.


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We have already extracted the contents stated by way of note below Column No.12. From the same, it is clear that the Central Board of Excise and Customs can specify the requirements to be complied with. R-2 is dated 18.12.89. There, it is specifically stated the procedure to be followed for selections to be made of candidates from the ministerial grades for promotion to Group 'C' executive posts in the Customs, Central Excise and Narcotics Department. It is stated by the learned counsel for the applicant that the post of Inspector, Central Excise is a Group 'C' executive post. As per paragraph 2.1 of R-2, besides physical tests, the selection process comprises of written test, interview and assessment of the CCRs. Subsequently, R-3 has been issued making certain modifications to R-2. Even after modification, the selection process comprises of interview also. R-1 also specifically limits the number of chances to two.

13. The learned counsel appearing for the applicant submitted that R-2 is not in consonance with A-1 recruitment rules and therefore, R-2 is only to be ignored. R-2 is not under challenge. There is no relief sought to quash R-2. We are not inclined to say that R-2 is not in consonance with A-1. According to us, R-2 does not enlarge or restrict the scope of A-1. R-2 is only within the limits prescribed as per the note below Column No.12 of the Schedule to A-1. That being so, we are unable to accept the argument advanced by the learned counsel for the applicant that there is no provision for interview for promotion to the post of Inspector, Central Excise and the procedure adopted by the Departmental Promotion Committee is wrong.

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14. Accordingly, the O.A. is dismissed. No costs.

Dated this the 19th day of January, 2000.

  
G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

  
A.M. SIVADAS  
JUDICIAL MEMBER

nv/2012000

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1: True copy of Recruitment rules for promotion as Inspector, Central Excise, issued by the 1st respondent notified in the Gazette dated 2.6.79.
2. Annexure A-4: True copy of Order No.C.No.11/3/6/97 Cen.Ex. dated 24.1.97 issued by 3rd respondent to the applicant.
3. Annexure A-5: True copy of the reply statement dated 28.2.1997 in O.A. 145/97 filed by 3rd respondent before this Hon'ble Tribunal.
4. Annexure A-7: True copy of Order C.No.11/3/5/9-Estt-1 No. 43/97 dated 24.2.97 issued by the 3rd respondent to Party Respondents.
5. Annexure R-1: True copy of letter No.F.No. A-32022/10/74 - Ad.III.A dated 6.10.1975 issued by Shri. S. Ghosal, Under Secretary to the Government of India, Ministry of Finance, Government of India.
6. Annexure R-2: True copy of letter No.B 12014/4/88-Ad.IIIA dated 18.12.89 issued by Prakash Chandra, Under Secretary to the Government of India, Ministry of Fiance, Government of India.
7. Annexure R-3: True copy of the Order No.F.No.A-32011/21/90 - Ad.IIIA dated 9.5.1991 issued by Shri Tarsem Lal, Under Secretary, Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India. No.A-32011/21/90 -
8. Annexure R-5: True copy of the order in o.a. No.1627/92 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench dated 6th September, 1994.