

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 530/2004

Thursday this the 1st day of February, 2007.

CORAM :

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

1. Netticadan Antonio,
Inspector of Central Excise,
O/o the Commissioner,
Central Excise & Customs,
Cochin Commissionerate,
C.R. Building, I.S.Press Road,
Cochin-682 018.
2. Kurien P Mathew,
Inspector of Central Excise,
Service Tax Range,
Trivandrum Division,
Trivandrum.
3. V.T.Joseph,
Inspector of Central Excise,
FACT Range,
Central Excise Division,
Ernakulam I,
Central Excise Bhavan,
Kathrikadavu, Cochin-18.

: **Applicants**

(By Advocate Mr. Shafik M.A.)

v.

1. Union of India represented by
Secretary,
Department of Revenue,
Ministry of Finance,
New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi.
3. The Chief Commissioner of Customs & Central Excise,
Kerala Zone, Central Revenue Building,
I.S.Press Road,
Cochin-682 018.

4. V.Jayaraj,
Inspector of Central Excise,
Kottayam II Range,
Kottayam.

5. Pradeep Kumar,
Inspector of Central Excise,
Excise Range, Punalur. : Respondents

(By Advocate Mr Varghese P Thomas, ACGSC for R.1 to 3)

(By Advocate Mr Martin G Thottan for R.4)

(By Advocate Mr M.K.Chandra Mohan ^{Das} for R.5)

The application having been heard on 15.1.2007, the Tribunal on 1.2.2007 ~~the same day~~ delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. Three Inspectors of Central Excise, S/Shri N Antanio, Kurian P Mathew and V.T.Joseph have filed this application, aggrieved by orders of relaxation of qualification consequent to restructuring.

2. The applicants have been working as Inspectors with effect from 1988, for more than 16 years. Next promotion is to the cadre of Superintendents vide A-2 Recruitment Rules (RR). For such promotion, Inspectors of Central Excise should have eight years regular service. Any relaxation therefrom is possible under Rule 6 of the RR, which reads as follows:

"6. Power to relax: Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order and for reasons to be recorded in writing and in consultation with the Union Public Service Commission, relax any of the provisions of these rules with respect to any class or category of persons."

According to the applicants, considerable stagnation was experienced among the cadres and the respondents were undertaking some measures to reduce the same. The stagnation problem was met, to some extent, by the A-3 order dated



5.6.2002 but it was of a limited effect with regard to the posts of Superintendents in the Kerala zone, compared to the other zones of the country. Feed back from the field formations were obtained by the respondents vide A-8 dated 17.2.2004, wherein, the Member Secretary of the Committee under the chairmanship of the Member (P&V) to examine the issues of all India seniority in Group B, C & D posts requested the Secretary General, All India Central Excise Executive Officers Federation to offer comments/suggestions on the enclosed working paper on or before 3.3.2004. It was while these measures were under way that respondents issued A-1 instructions to all the Chief Commissioners of Central Excise and Customs, Chief Commissioners of Customs and all Directorates General and Directorates under the CBEC. The highlights of the said instructions were as follows:

- some of Group B services could not be filled up due to non-availability of eligible candidates.
- with the approval of the Finance Minister, it has been decided to accord one year relaxation in qualifying service as prescribed in the RR for filling up of Group B ministerial and non-ministerial services arising out of cadre restructuring as a one-time measure.
- follow-up action was to be taken for setting up of review DPC for such vacancies.
- such DPC would concern itself with only those vacancies arising out of cadre restructuring.

3. Challenging the above reference, the applicants have come before this Tribunal for the grant of following main reliefs:

- i) Quashing of A-1 .
- ii) A declaration that the essential qualifications prescribed by the RR-s cannot be diluted by issuing executive orders like A-1.
- iii) A direction to the 2nd respondent to implement the proposals in A-8.



4. The following grounds are relied upon, by the applicants:
 - i) Relaxation of qualifications prescribed by the RR was illegal, especially in view of the mounting stagnation.
 - ii) Such relaxation was over looking the availability of qualified candidates for promotion.
 - iii) The legal precondition for relaxation, viz, consultation with the UPSC, having not been satisfied, A-1 is ultravires the law and beyond the powers of the respondents.
5. Respondents in this application, three official respondents and two party respondents who are Inspectors of Central Excise (R4 & 5), oppose the application on the following grounds:
 - i) Stagnation felt in certain cadres is a different issue from that of the relaxation envisaged in A-1).
 - ii) A-1 is focused on the vacant posts in reserved candidates quota, against which the applicants cannot have any stake.
 - iii) Comparison with the increase in vacancies in other zones versus that in Kerala zone is not conceptually acceptable as cadre revision is a function of many variables.
 - iv) The applicants could not be promoted as their quota had been exhausted and not because of any stagnation.
 - v) No challenge is made against A-3 order, which actually allocated the posts after restructuring.
 - vi) Cadre restructuring is a prerogative of the executive, not amenable to judicial intervention.
 - vii) A-1 is applicable to all eligible employees and there is no implicit discrimination in that order.



- viii) It is the prerogative of the Central Government to decide whether to consult the UPSC at all in terms of Rule 6 of the RR.
- ix) Action had already been taken throughout the country in implementing A-1 order.

6. Heard the parties and perused the documents.

7. Reverting to one of the remedies sought for, relating to implementation of measures to reduce stagnation, it is worthwhile tracing the history in brief and the measures already underway. As already referred to, vide A-3 document dated 5.6.2002, allocation of posts was made by the Government of India. Vide A-4 document dated 8.10.2003 certain measures were undertaken relating to the restructuring of the department with the object of reducing stagnation at certain levels and relaxation in RR was made towards that end. Vide A-5 document dated 27.11.2003, the Secretary General of All India Central Excise Executive Officers Federation was requested to suggest measures to remove stagnation to complete the study on removing the disparity in promotion of Inspectors to the post of Superintendents. In turn, vide A-6 document dated 15.12.2003, the employee's Association in Kerala were requested to offer comments on the question of disparity in the promotion of Inspectors to the grade of Superintendents. Vide A-7 document dated 21.1.2004, the Kerala Association gave certain suggestions in response to the A-6 document. Vide A-8 document, the Directorate of Organization and Personnel Management requested the Secretary General of All India Central Excise Executive Officers Federation to offer feed back on the working paper attached to the letter on or before 3.4.2004. The officers Association in Cochin addressed a letter dated 15.3.2004 (A-9) to Member(P&V), CBEC, outlining the grievances. Almost on similar lines, the Association sent another representation (A-10) dated 7.4.2004 to the Secretary, Department of Revenue. According to the information of the



applicants vide their rejoinder, the task of preparing the proposal for cadre restructuring is already underway. Respondents, too have averred that the issue is under consideration for further processing. Thus, both parties are in general agreement about the action being undertaken with regard to the issues raised by the applicants, including their grievances. The resolution of the issues are squarely within the executive domain of the Government of India. Judicial intervention is hardly called for. The contents of the A-8 document, the implementation of which is being sought for as one of the reliefs in this OA, is only a working paper. No order can be passed thereon by this Tribunal. Hence, we find that there is no scope for judicial intervention from this Tribunal as regards the implementation of A-8 document. We only observe that a decision on the various proposals before the Government of India in this regard be taken at the very earliest.

8. As relating to the relief of quashing of the impugned order A-1, the stand of the applicants is that the relaxation brought about was without consultation with the UPSC, a sine qua non under Rule 6 of the RR. The official respondents do concede that no such consultation was made. Respondent 5 contends that A-1 is not an executive instruction. In pursuance of the impugned document, consequential orders have been passed in Chennai zone as evidenced by Annexure R5(a). Accordingly a review DPC was held relaxing the residency period of one year and promoting two officers, who incidentally were ST candidates. It is also mentioned in the said order R5(a) that the promotion is subject to the decision of the Central Administrative Tribunal and other appropriate forums in pending cases, if any. According to the Respondent 4 also, a large number of persons were promoted in all Commissionerates except in Kerala Central Excise Zone and any alteration or modification in A-1 will prejudicially affect such persons in the absence of any opportunity given to them for presenting their version. On the point whether the A-1 instruction constitutes



executive instructions coming within the ambit of Rule 6 of the RR-s, it is seen that A-1 has been issued by the Ministry of Finance and there are instructions to be complied with by those authorities mentioned in the mailing list. Hence we hold that it is such an instruction. The second point is about the appointments already made elsewhere except in Kerala zone and any adverse decision on the impugned order amounting to an adjudication without hearing the beneficiaries of such action. This, *prima facie*, is a fair statement. The private respondent-5 has produced in this regard, orders passed(R-5(a)) by the Chief Commissioner of Central Excise, Chennai Zone. Reference to the contents of this order has already been made above. Inasmuch as the said orders have been passed subject to decision of Central Administrative Tribunal, there is no apprehension of causation of prejudice to the beneficiaries of this order. R-5 has also made a similar contention but without producing any orders on similar lines. The responsibility for reporting incidents of appointments made elsewhere rests with the official respondents. But no such claim has been made by them, either at the stage of the reply statements or even after getting access to the reply statements by R-4 and R-5. In fact after the said reply statements, the official respondents have had ample time and opportunity to file statements on this issue. We have to conclude therefore there is no such apprehension of a possible adverse order on A-1 affecting prejudicially any beneficiary of A-1 dispensation. A common point made by all the respondents is that the vacancies covered under the A-1 order are meant for the reserved candidates. A plain reading of the said order does not reveal any such connection. The point made by the applicants is that relaxation in period of experience would lead to promotion of people who are very much junior to the applicants. This would implicitly be an admission on their part that this is meant for reserved candidates; if it was to apply to the general candidates, the applicants should have nothing to fear from them because relaxation *per se* would not affect the applicants' chances. If, on the other hand, this is meant for the reserved



candidates as contended by the respondents, the applicants can give no competition to them and the A-1 should not really cause any prejudice to them. Hence we feel that a direct nexus has not been effectively established by the applicants. That leads us to the last aspect of the challenge to the vires of the A-1 order. This order makes it clear that one year relaxation in qualifying service has been accorded by the Minister concerned in pursuance of a Cabinet decision. Rule 6 of the RR-s reproduced above has the following components for relaxation of any of the provisions of the RR-s:

- i) There should be an order by the Central Government.
- ii) Reasons should be recorded in writing.
- iii) There should be a consultation with the UPSC.
- iv) Such relaxation should be with respect to any class or category of persons.

It has been fairly conceded by the official respondents that the UPSC was not consulted. They have not taken the line of the private respondents that such consultation is only optional. We are of the view that such consultation has been mandated by Rule 6 of the RR-s. The applicants have brought to our notice their information that the DOPT, while giving their advice on relaxation, had insisted on the observation of prescribed procedure. Hence we find that non-consultation is a serious lapse. Secondly, as mentioned above, the impugned order does not make it clear as to which class or category of persons, such relaxation is meant for. This again is a serious lapse. We find that the impugned order is flawed seriously on two accounts – non consultation with the UPSC on the question of relaxation despite prescription in the Rules and the advice of the DOPT and non-specification of beneficiary class/category for whom such relaxation was being made.



9. In sum we find that

- i) It is not proposed to adjudicate on the question of cadre restructuring by passing any order on A-8 and,
- ii) The impugned A-1 order is ultravires the provisions of Rule 6 of the RR-s.

10. Under these circumstances, we partially allow the O.A by quashing A-1 orders. No costs.

Dated, the 1st February, 2007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

trs