

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

D.A.540/93

Friday, this the 1st day of July, 1994.

CORAM

HON'BLE MR N DHARMADAN, (J)

HON'BLE MR S KASIPANDIAN (A)

P.V. Sujatha, Tax Assistant,
Central Excise,
Divisional Office, Palghat. ... Applicant

By Advocate Mr R Santhoshkumar

Vs.

1. Union of India through the
Secretary, Ministry of Finance,
New Delhi.
2. The Collector of Central Excise,
Central Revenue Building, Cochin.
3. The Deputy Collector(P&V),
Office of the Collector of Central
Excise, I.S.Press Road, Cochin-18.
4. Mr.G. Viswanathan(Inspector of Central
Excise, Cochin Range)- Through Collector
of Central Excise,
Central Revenue
Building, Cochin.
5. Mr.C.K. Dinakaran, -do-
(Inspector of Central Excise,
Malappuram)
6. Miss Santha Balakrishnan, -do-
(Inspector of Central Excise,
Kannur I Range)
7. Miss Chinnamma Mathew -do-
(Inspector of Central Excise,
P.P. Range)
8. V.P. Vivek -do-
(Inspector of Central Excise,
Unit, Kannur)
9. T.C. Raja Kumaran -do-
(Inspector of Central Excise,
Chittur Range).
10. Sunny Kuriakose -do-
(Inspector of Central Excise,
Palghat II Range)
11. K. Subramaniam -do-
(Inspector of Central Excise,
Balaipatnam Range)
12. A.P. Suresh Babu, -do-
(Inspector of Central Excise,
Sultan Battery Range) ... Respondents

By Advocate Mr K Karthikeya Panicker, Addl.CGSC

O R D E R

N DHARMADAN (J)

Applicant is a Tax Assistant now working in the Central Excise, Divisional Office, Palghat. She is aggrieved by the denial of selection to the post of Inspector of Central Excise by the DPC which met on 12.10.92. Further grievances of the applicant are against the selection and appointment of the contesting respondents who were included in Annexure A2 panel dated 14.10.92.

2 According to the applicant, the vacancies of Inspector of Central Excise in the scale of Rs 1640- 2900 are to be filled up under the Recruitment Rules, 25% by promotion and 75% by Direct Recruitment. 25% of the promotion quota is kept open for UD Clerks, Tax Assistants and Stenographers. UD Clerks who have completed two years of service are entitled to sit for the qualifying examination. Those UD Clerks who were Tax Assistants qualified in the above examination and who have completed five years of service are also entitled to be considered for promotion based on the seniority. As per letter dated 3.9.92, applicant was also included in the list for consideration against vacancies of Inspector of Central Excise which arose during the year 1989-90. Even though applicant was also enlisted, as she was qualified for test and interview, she was not selected and included in the panel. Later, another notification dated 22.9.92 was also issued for considering candidates like applicant for promotion to the vacancies for the year 1990-91. Applicant was also considered in that selection, but according to her, she was excluded from the select list even though there was no adverse entry in her service records. By another notification dated 30.9.92 eligible candidates were invited for including in the list for consideration by

the DPC against the vacancies which arose in the year 1991-92. According to the applicant though her juniors were included, she was not considered for that year. Under these circumstances, the applicant filed OA1404/92. That application was later dismissed as not pressed. However, in the present application, applicant had made the following prayers:

- "a) Call for the records leading to the issue of Annexure A2 and quash the same in so far as it excludes the name of the applicant and includes that of her juniors, and
- b) To direct the respondents to include the applicant's name also in Annexure A2, with consequential benefits like arrears of pay etc. from the date of Annexure A2.

OR

- c) To call for the records leading to the issue of Annexure A2 and quash the same, and
- d) To direct the respondents to conduct a fresh selection in accordance with the existing rules, duly considering the applicant also,
- e) Pass such other orders or directions as deemed just and fit in the facts and circumstances of the case."

3 According to the applicant, she has not attained the age of 45 and the restriction regarding the number of chances for appearance and consideration for promotion will adversely affect her right to the promotion. If the applicant is not considered for promotion/posting to the vacancies which arose in the year 1991-92, she will be stagnated in the present post making her ineligible for further promotion till her retirement. She further submitted that there is no rule or instructions restraining the number of chances for officers who are between 38 years and 45 years of age. Since applicant has not completed 45 years, she is entitled to be considered for selection to the post of Inspector of Central Excise not only for the selection as notified as per Annexure A1, but also for subsequent selections including selection for the vacancies which arose in the year 1991-92.

At the time when the D.A. was admitted on 26.3.93 after hearing Standing Counsel for respondents, we have passed

the following interim order:

" As regards interim relief in conformity with the interim relief given to the applicant in his previous O.A. 1405/92, we direct the respondents to consider the applicant also in the interview proposed to be held on 29th, 30th and 31st March, 1993 for selection to the post of Inspector, Central Excise, provisionally and without prejudice to the outcome of this application."

Pursuant to the directions in the interim order, applicant was also considered alongwith other candidates eligible for selection to the post of Inspector of Central Excise for the year 1992-93. She has been included at Sl.No.3 in the list to be considered for promotion to the cadre of Inspector of Central Excise (for the period 1.4.92 to 31.3.93). Thus, the DPC has recommended the applicant for promotion. It is under these circumstances, we are called upon to consider the grievance of the applicant based on the contentions raised by the parties.

5. It is the case of the applicant that since she has not attained the age of 45 years, she can be considered for promotion as Inspector of Central Excise in any of the existing vacancies irrespective of the number of chances as indicated in the Recruitment Rules, read with the Executive Orders dated 6.10.75 and September, 1988 (Annexure A5). The Recruitment Rules for the post has been produced by the applicant as Annexure A4, ^{the Relevant} Col. 4 of which read as follows:

... Whether age and and educational qualifications prescribed for direct recruits will apply in the case of promotees.	... Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods.	In case of recruitment by promotion/deputation/transfer, grade from which promotion/deputation/transfer to be made.
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Not applicable.

By promotion.

Promotion:

Inspector (Ordinary Grade) with 5 years service in the grade.

Note: Candidates will be required to possess such physical standards and pass such written test and physical tests and confirm to such age limites as may be specified in the Central Board of Excise and Customs from time to time.

Applicant also relied on Annexure A5 instructions issued by the Department note dated September, 1988:

ANNEXURE A 5

C.B.E.D. DIGEST
SEPTEMBER - 1988

ADMINISTRATION - PAGE NO.66

173. FOURTH PAY COMMISSION'S RECOMMENDATIONS-
IMPLEMENTATION THEREOF - UPGRADEMENT OF 1/3rd
POSTS OF UDCs IN CUSTOMS AND CENTRAL EXCISE TO
THAT OF TAX ASSISTANT IN THE REVISED SCALE OF
Rs 1350 - 2200 - REGARDING-

.....

Attention is invited to Para 6 of this Department's letter of even number dated 11th March 1988 on the above subject and to say that the promotion prospects of Tax Assistant to the grade of Inspector of Central Excise and DOS (L.II) has been examined and it has been decided as under:-

- (1) Tax Assistant will be eligible for promotion to the grade of Inspector of Central Excise. For promotion to the grade, Tax Assistants will have to be within the prescribed age limit and should also satisfy the physical standards and qualify in the prescribed physical test. They will not however, be required to pass a further qualifying examination.
- (2) Tax Assistants with 2 years service in the grade or with 5 years total service in the grade of UDC and Tax-Assistant, if any, taken together will be eligible for promotion to the grade of Inspector of Central Excise. Other categories of officers e.g. Stenographer, Women Searcher, Draftsman etc. will also be eligible for promotion as Inspector of Central Excise as provided in the Recruitment Rules.
- (III) Tax Assistants will continue to be eligible alongwith UDSs and Stenographers Grade-III for same criteria as in the case of promotion to the post of Inspector i.e. 2 years service as Tax Assistant or 5 years service as Tax Assistant and UDC put together may be adopted.
- (IV) In the consideration list for promotion to the grade of Inspector as well as DOS(LII), Tax Assistant being on a higher scale, will be placed embloc above the UDCs in the Seniority. The Recruitment Rules for the posts of Inspector of Central Excise and DOS (L.II) are being amended accordingly. Pending amendments of these rule and framing Recruitment Rules for the Post of Tax Assistants, the post of Inspector of Central Excise and DOS (L.II) may be filled on above lines.

(M.F.(DR) F.No.A 26011/10/86-Ad.IIa(PC) dt.5.8.88)".

4

Relying on the notification at Annexure A5, applicant contended that a Tax Assistant, will have to be considered for promotion to the post of Inspector of Central Excise provided he/she is within the prescribed age limit and ~~has~~ satisfied the physical standard for promotion. According to applicant, Annexure A5 modified the earlier instructions dated 6.10.75 which prescribed that UDCs/ Stenographers may be considered for promotion to Executive Posts upto the age of 45 years with no limitation as to the number of chances provided they are having 'outstanding merit'.

6 Respondents have relied on the judgment of this Tribunal in MA Somasekharan Vs. Deputy Collector and others (O.A. 1404/92) and submitted that the Recruitment Rules governing the selection to the post of Inspector of Central Excise had been considered in an identical matter and the case of the applicant therein was rejected. That judgment was followed in another judgment in OA 1627/93. According to applicant that case is pending in review. However, he submitted that this O.A. is also to be dismissed following the above judgment. He further submitted that in that case also applicant's case was considered by the DPC as in this case. If this judgment is not followed, there will be inconsistency causing difficulty for the department.

7 We have carefully gone through the judgment in OA 1404/92. We do not find any inconsistency as suggested by the learned counsel for the respondents. That was a case filed by an ex-serviceman, who was reemployed as L.D.Clerk in the Customs House and subsequently promoted as UD Clerk and thereafter as Tax Assistant. He had availed of two chances and sought exemption and relaxation of age in view of the fact that he is overaged for getting benefit of consideration for promotion in the light of the Recruitment Rules read with Executive Orders dated 6.10.75 referred to above.

After considering the scope and application of the Executive Order dated 6.10.75 in the Recruitment Rules, this Tribunal reached the conclusion that the applicant therein is not eligible for exemption and relaxation since he has availed of two chances and exhausted his claim for getting consideration for promotion being an officer who attained 45 years.

8 The contention raised by the applicant in the instant case in the light of Annexure A5 has not been either placed before the Tribunal for consideration nor did the Tribunal consider the same. If as a matter of fact, the contentions raised in this case were also considered in the light of Annexure A5, presumably a different view would have been possible and taken by the Tribunal. However, the fact that the applicant in that case was an ex-serviceman and over aged makes a world of difference and the facts are distinguishable. The Supreme Court has held that while considering the direction in a judgment, and applying the same, it is incumbent on the Tribunal to see whether the facts are identical. If there are some differences in facts, the case is distinguishable and the dictum would not squarely apply. In the instant case the facts are distinguishable and hence, the decision relied on by the respondents would not apply.

9 The applicant submitted that in the light of the Recruitment Rules read with Annexure A5 a different view is possible. According to the learned counsel for applicant the Executive Order dated 6.10.75 stands modified in the light of the order at Annexure A5, the application of which was not considered in the judgment relied on by the respondents. It is clear from the last portion of Annexure A5 that the Recruitment Rules itself has been amended by the said provision as indicated above and a Tax Assistant, who is within

the age limit is eligible for consideration, provided he satisfies the physical standard and prescribed physical test, irrespective of the number of chances within that age limit. A reading of the provisions in Annexure A5 with the Recruitment Rules bearing in mind the principle that it is the duty of the employer to provide more chances for promotion to the employees in the service so as to avoid stagnation persuades us to accept the above contentions raised by the learned counsel for the applicant. In this view of the matter, we are satisfied that there is considerable force in the submission of the learned counsel for applicant that the applicant's case can be considered notwithstanding the fact that she had already availed of two chances, for her case comes squarely within Annexure A5.

10. In this case there is another additional factor in favour of the applicant. The DPC while considering her case alongwith other eligible candidates for promotion as Inspector of Central Excise for filling up the vacancies which arose during 1991-92 as indicated above, found her fit for promotion. Even though, we have passed an interim order directing the respondents to consider the applicant for promotion in accordance with law, they are bound to consider the claim of applicant strictly in accordance with the existing rules. If the applicant was not eligible, the DPC would have considered her case pursuant to the directions and made a note to the effect that she is not eligible. This Tribunal did not direct to select her even if she is not eligible. The DPC did not make any such endorsement in the minutes. Hence, under these circumstances the fact that applicant was recommended by the legally constituted DPC indicates that the applicant is fully eligible for promotion as Inspector of Central Excise and posting in any of the vacancies which arose during the period 1.4.93 to 31.3.94, if she is otherwise fit for promotion.

11. In the result, having regard to the facts and circumstances of the case, we allow the application, and direct the respondents to consider the applicant for promotion as Inspector of Central Excise in the light of the recommendations made by the DPC, and the above, if she is otherwise eligible and suitable for promotion in the vacancies noted above and include her name in Annexure A2 in appropriate place. The directions shall be complied with within a period of four months from the date of receipt of a copy of this order.

12. Accordingly the application is allowed as above. There will be no order as to costs.

Dated the 1st July, 1994.



S KASIPANDIAN
ADMINISTRATIVE MEMBER



N DHARMADAN
JUDICIAL MEMBER

1-7-94